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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1280.

HENRY H. PORTER, APPELLANT,

vs.

THE PITTSBURG BESSEMER STEEL COMPANY (LIMITE
THE CLEVELAND ROLLING MILL COMPANY, TH
SMITH BRIDGE COMPANY, CRERAR, ADAMS AND CO
PANY, AND VOLNEY Q. IRWIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FO
THE DISTRICT OF INDIANA.

FILED NOVEMBER 9, 1884.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

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1 Pleas of the circuit court of the United States for the district of Indiana, begun and holden at the United States court-house in the city of Indianapolis, in said district, on the first Tuesday of May, in the year of our Lord one thousand eight hundred and eighty-six, before the Honorable Walter Q. Gresham, judge of said circuit court, and the Honorable William A. Wood, judge of the district court of the United States for the district of Indiana and *ex-officio* judge of said circuit court.

HENRY H. PORTER *vs.* THE CHICAGO & GREAT SOUTHERN RAILWAY COMPANY and Others.	No. 7932. Chancery.

Be it remembered that heretofore, to wit, at the November term of said court, on the 9th day of March, 1885, before the Honorable William A. Woods, judge as aforesaid, the following proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by Peirce, McDonald, Butler & Mason, his solicitors, and files his bill of complaint herein in the words following, to wit:

2 To the honorable the judge of the said court in chancery sitting:

Your orator, Henry H. Porter, would respectfully show unto your honor that he is a citizen of the State of Illinois and a resident of Cook county, in said State, and that the said Chicago & Great Southern Railway Company is a corporation duly organized and existing under the laws of the State of Indiana, and is a citizen of said State of Indiana, and that John C. New, trustee; Andrew Grinking, Volney Q. Irwin, James McCalmont, Ison Collyer, Robert B. Lank, John W. Mills, Lafayette Car Works, William Wallace, James Wallace, John W. Bear, Emery Constantine, Charles Bright, Henry Smith, Robert Cochran, Geo. F. Sims, Bayless Raypole, John W. Gass, Fred. Sheets, Alex. A. McDonald, Edward Larson, OttoBuryston, John Peterson, Washington L. Bryant, James H. Lyons, James Newman, and Felix Warbritten are citizens of the State of Indiana.

And your orator would further show that the said Chicago & Great Southern Railway Company on and before the first day of
3 November, 1881, was the owner of and engaged in constructing and operating a line of railroad of about eighty miles in length, extending from Fair Oaks junction, in the county of Jasper, passing through the said county of Jasper, the counties of Newton, Benton, and Fountain, all in the said State of Indiana, to Yeddo, in said last-named county, and had also located about forty miles more of its said line, extending from Yeddo aforesaid to Brazil, in the county of Clay, in said State of Indiana; that on the said first day of November, 1881, the said railroad company duly executed and delivered to the said John C. New, of Indianapolis, Indiana, as trustee, a certain trust deed or mortgage, bearing date the day and year last aforesaid, a copy of which is marked Exhibit "A" and

made a part of this bill of complaint, by which said trust deed or mortgage the said railroad company conveyed the northern division of its said line of road between Brazil, in the county of Clay aforesaid, and its junction with the Louisville, New Albany & Chicago railway at Fair Oaks aforesaid, being the line of road above 4 described, together with all and singular the rights of way, roadbed, made or to be made, its track, laid or to be laid, between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, turn-tables, machine shops, buildings, coal lands, and contract rights in any way now or hereafter appertaining, unto said described division of railroad, together with all the engines, cars, machinery, supplies, tools, and fixtures now or at any time hereafter held, owned, or acquired by said party of the first part for use in connection with its division aforesaid, with all its depot grounds, yards, sidings, turnouts, sheds, machine shops, leasehold rights, and other terminal facilities now or hereafter owned or leased and enjoyed by the said party of the first part pertaining to said division, together with all and singular the powers and franchises thereto belonging, and the tolls, income, and revenue to be levied and derived therefrom, to secure a proposed issue of two millions of dollars of bonds to be executed by said company, bearing interest at six per cent. 5 per annum, payable semi-annually on the first day of January and July of each year; that immediately after the execution and delivery to said John C. New, trustee, of said mortgage and deed of trust it was duly recorded in the counties of Jasper, Newton, Benton, Warren, and Fountain, and became thereby and has ever since continued to be the first and paramount lien to all the property described in said deed.

That afterwards, in the month of March, 1883, said railway company acquired by consolidation the railroad and all the property of the Chicago and Block Coal Railroad Company, consisting of about twenty miles of completed road extending southwardly from Attica to Yeddo, in Fountain county, and divers rights of way and partially constructed railway extending from Yeddo, through Parke county, and to Brazil, in Clay county.

And that thereafter, on April 9th, 1883, the said Chicago and Great Southern Railway Company, by way of further assurance of title, executed a supplemental trust deed, a copy of which is 6 filed herewith and made a part hereof, marked Exhibit "B," conveying all of the said property theretofore belonging to the Chicago and Block Coal Railroad Company as further security of the payment of principal and interest of the bonds issued under the trust deed of November 1st, 1881, which was duly recorded in the counties of Fountain, Parke, and Clay, and became and has ever since continued the first and paramount lien on that property.

That after the execution and delivery of said indentures of November 1st, 1881, said Chicago and Great Southern Railway Company issued and negotiated for value twelve hundred thousand dollars of the bonds specified therein, and said bonds are still outstanding.

That on July 1st, 1882, the interest matured on said issue of bonds, and the same was not paid, and the interest maturing on said bonds on the first days of January and July, 1883, 1884, and first day of January, 1885, are all past due and unpaid.

7 Your orator further alleges and shows to the court that he is the owner and holder of all the bonds and coupons thereunto belonging issued as aforesaid, and that on the — day of January, 1885, he demanded in writing of said John C. New, trustee as aforesaid, that he should proceed to execute the trust of said two indentures executed to him as aforesaid, and to protect the lien and priority thereof upon said railroad property, and to procure the sale of the same to satisfy the principal and interest of said bonds, and in obedience to said demand said trustee has instituted proceedings in the Newton circuit court in said State of Indiana to foreclose said mortgage and sell said property; but on the — day of —— the said John C. New, as such trustee, dismissed his said bill of complaint against the said railroad company and declined further to prosecute the same, and hitherto has declined, and still declines, although he has been thereunto especially requested by your orator, or to take any other steps to enforce said trust.

8 And your orator would further show and aver that the said mortgaged property constitutes an inadequate security for the bonded debt which is charged against it by the lien of said mortgages; that no interest has ever been paid on any part of the outstanding bonds, and that the income and resources of the railroad are insufficient in the present condition of the property to pay the mere operating expenses; that the mortgagor corporation is insolvent, and has no property or assets other than the mortgaged property aforesaid, and that said line of railroad and all its appurtenances must necessarily be considered as a unit, and is altogether incapable of severance without doing great injury and injustice to all persons interested.

9 And your orator further says that by the terms of said trust deed, marked Exhibit "A," it is among other things provided that if a six months' default shall occur in the payment of either the principal or interest of any of the bonds thereby secured after actual demand as aforesaid, then it shall be lawful for the said trustee upon the written request of the holders of a majority in amount of said bonds then outstanding, and upon receiving satisfactory indemnity, either with or without entry upon said premises, to cause all and singular the premises, railway, appurtenances, equipment, and franchises thereby conveyed to be sold as an entirety at public auction to the highest and best bidder, at the city of Chicago, Illinois, after giving at least sixty days' notice of the time, place, and terms of sale by advertisement in a newspaper of general circulation in the city of Chicago, and like advertisement in a newspaper of general circulation in the city of New York, and on such sale said trustee, party of the second part in said deed of trust, shall make, execute, acknowledge, and deliver unto the purchaser or purchasers thereof a good and sufficient deed in fee-simple conveying said railroad property and franchises so sold, which conveyance shall be a perpetual bar in law and equity against the said party of the

10 first part, the railroad company aforesaid, its successors and assigns, and all persons claiming or to claim under them, of all right, title, interest, or claim in and to the said premises and franchises of any part thereof. But it is expressly provided that nothing in said instrument contained shall in any way be construed to take away or interfere with the right of the said trustee, party of the second part in said instrument, after a six months' default in the payment of interest or principal of the bonds thereby secured, to proceed, at his election, to institute legal proceedings in any court of competent jurisdiction to foreclose the said mortgage and to procure a judicial sale of the property thereby conveyed.

And your orator avers that by reason of the premises and of the default in the payment of interest by the said railroad company a right of action has accrued to the trustee to proceed to the foreclosure and sale of said premises by judicial proceeding, and that the failure and refusal of the said trustee to proceed further in the execution of said trust, as hereinbefore alleged, has vested in
11 your orator as the holder and owner of the bonds secured by
said trust deed or mortgage the same rights and privileges for the enforcement of the said trust that might have been exercised by the said trustee, the same being necessary to his protection as such bondholder.

Wherefore your orator, inasmuch as he is without adequate remedy in courts of law, and can only have full and complete remedy in courts of equity, where matters of the kind set forth in the foregoing bill are properly cognizable and relievable, would pray that the said Chicago & Great Southern Railway Company and John C. New, trustee aforesaid, and Andrew Grinking, Volney Q. Irwin, James McCalmont, Isor Colyer, Robert B. Lank, John W. Mills, Lafayette Car Works, William Wallace, James Wallace, John W. Bear, Emery Constantine, Charles Bright, Henry Smith, Robert Cochran, Geo. F. Sims, Bayless Raypole, John W. Gass, Fred. Sheets, Alex. A. McDonald, Edward Larson, Otto Burgston, John Peterson, Wash-
12 ington L. Bryant, James H. Lyons, James Newman, and Felix
Warbritten, parties above named, be made defendants to this his bill of complaint, and that a subpœna in chancery issue against them, commanding them and each of them, on a day to be therein named, to appear to this his bill of complaint and file answers thereto severally and specifically, answering each and all of the allegations of said bill as fully as if the same were here repeated in the form of distinct interrogatories, and that the said defendant creditors of the said railroad company be each severally required to set forth and specify the nature and character of their several and respective claims against said company, and that the said John C. New, trustee as aforesaid, be also required to specifically answer the allegations of the said bill respecting his action in the premises in connection with the said trust, and that upon the final hearing hereof there be a decree entered in favor of your orator forever foreclosing the
13 equity of redemption of the said Chicago & Great Southern
Railway Company, and all persons claiming by or through it, to the premises, property, rights, and franchises set forth and de-

scribed in the said instruments marked Exhibits "A" & "B" and attached to and made a part of this bill of complaint, and in the meantime and until the final disposition of this cause that a receiver of this court be appointed to take possession of all and singular the said railroad, property, rights, franchises, and appurtenances as the same are set forth in the said instruments marked "A" & "B," and to hold, operate, use, and administer the same, under the orders and decrees of this court, for the benefit of your said orator and other persons in interest, and for all further and proper relief consistent with equity and good conscience in the premises; and, as in duty bound, your orator will ever pray.

R. B. F. PEIRCE AND
McDONALD, BUTLER & MASON,
Sol'rs for Complainant.

14 EXHIBIT "A" to bill.

This indenture, made and entered into this first day of November, A. D. one thousand eight hundred and eighty-one, by and between the Chicago and Great Southern Railway Company, party of the first part, and John C. New, of Indianapolis, Indiana, party of the second part, as trustee, for the uses and purposes hereinafter set forth, witnesseth:

Whereas the party of the first part is a corporation duly created by and existing under the laws of the State of Indiana, and is the owner of all and singular the line of railway, coal lands, equipment, appendages and franchises hereafter more particularly described, together with the franchises and powers to operate the same and levy and collect tolls thereon, all and singular, which property and franchises are now in the possession of and use of said party of the first part; and

Whereas the said party of the first part has full authority and power under the laws of the State of Indiana to borrow money for its corporate purposes and to enable it to construct, complete, improve, equip, and operate its road, and has the further authority to issue its corporate bonds to effect such loan, and also full au-
15 thority to secure the same by mortgage or deed of trust upon
the northern division of its railroad, constructed and to be constructed, coal lands, equipment, franchises, and income of the said party of the first part, as hereafter described; and

Whereas the board of directors of said party of the first part did, at a regular meeting, duly convened and held on the twenty-ninth day of October, 1881, resolve that, for the purpose of borrowing money for the corporate purposes aforesaid, the said party of the first part should prepare, sign, seal, and negotiate a series of bonds, amounting in the aggregate to two million dollars ($2,000,000), in the form following, except as to numbers, viz:

UNITED STATES OF AMERICA, *State of Indiana.*

$1,000.00. No. —.

First-Mortgage Northern Division Gold Bond.

The Chicago and Great Southern Railway Company, a corporation existing under the laws of the State of Indiana, for value received, promises to pay to John C. New, of Indianapolis, Indiana, or bearer, the sum of one thousand (1,000) dollars in gold coin of the United States of the present standard of weight and fineness, at the office of the Central Trust Company in the city of New York,
16 on the first day of January, in the year one thousand nine
hundred and twelve, with interest, payable in like gold coin of the United States at the rate of six per cent. per annum, on the first days of January and July of each year, on the presentation and surrender of the annexed interest warrants, according to their tenor.

The principal and interest of this bond *is* payable without relief from valuation or appraisement laws.

This bond is one of a series of like date, tenor, and effect, amounting in the aggregate to two million (2,000,000) dollars, being ten thousand bonds of one thousand dollars each, numbered consecutively from 1 to 2,000, inclusive, all such bonds bonds being equally secured by a first mortgage or trust deed of even date herewith, conveying all and singular the northern division of said Chicago and Great Southern Railway Company, wherever situate, together with all its property, equipment, appurtenances, and franchises, unto said John C. New, of Indianapolis, Indiana, as trustee, which said mortgage or trust deed has been duly recorded according to law in each of the counties in Indiana where said northern division is situate.

This bond shall pass by delivery or by transfer on the
17 books of the said railway company at its agency in the city
of New York, and after any such registrations of ownership on the books of such agency, duly certified on the back hereof by the transfer agent, no transfer hereof shall be valid or pass any title hereto unless made in writing on the books of such agency, unless the last precedent transfer has been made to bearer, in which event the bond shall become thereby transferable by delivery.

This bond shall continue subject to successive registrations and transfers to bearer as aforesaid at the option of any holder thereof, in accordance with the above provisions.

No bond of this series shall be valid and obligatory unless the same is duly authenticated by a certificate endorsed on the back thereof duly executed by the said trustee.

In witness whereof the said Chicago and Great Southern Railway Company has caused the foregoing to be attested by its president and secretary and its corporate seal to be attached, this first day of November, A. D. one thousand eight hundred and eighty one.

—— ——, *President.*
—— ——, *Secretary.*

18 With sixty coupons for the semi-annual interest to become due thereon in the following form to be attached thereto:

On the first day of July, 1882, the Chicago and Great Southern Railway Company will pay the bearer thirty dollars in gold coin, at the Central Trust Co. of New York, for six months' interest on its first-mortgage northern division bond.
No. —.

—— ——, *Secretary.*

Said coupons differing so as to express the form and time of payment of each, and having the secretary's signature engraved thereon. Such issue of bonds to be two thousand bonds of one thousand dollars each, being numbered from Nos. 1 to 2,000, both inclusive, and having also the following certificate to be attested by the trustee, viz:

Trustee's Certificate.

I, John C. New, of Indianapolis, Indiana, trustee, hereby certify that this bond is one of a series amounting in the aggregate to two million dollars, as mentioned in the within-described mortgage, which has been duly recorded in the several counties in which the northern division of said railroad is situate.

—— ——, *Trustee.*

19 Whereas it was further resolved by the said board of directors at such meeting that, in order to secure the payment of the principal and interest of such issue of bonds, the said party of the first part should prepare, sign, seal, acknowledge, execute, and deliver in due form of law a deed of trust or mortgage unto some proper person as trustee conveying all the present and in-future to be acquired northern division of railway, appurtenances, contract rights, equipment, coal lands, and income, interest, and security for the payment of such issue of bonds and coupons:

Now, therefore, under the authority and power aforesaid and in order to secure the payment of the principal and interest of said issue of two million dollars of bonds as aforesaid, and in consideration of the premises and the further payment by the party of the second part unto the party of the first part, of the sum of one dollar, the receipt of which is hereby acknowledged, the Chicago and Great Southern Railway Company has bargained, sold, granted, conveyed, and confirmed, and by these presents does bargain, grant, sell, convey, and confirm, unto John C. New, and to his successor or
20 successors in trust and for the uses and trusts hereby created, all and singular the northern division of railway of the said party of the first part, as the same now is or may hereafter be constructed between Brazil, Clay county, Indiana, extending thence northwardly through the counties of Clay, Parke, Fountain, Warren, Benton, Newton, and Jasper, to a junction with the Louisville, New Albany and Chicago railway, at or northwest from Rensselaer, Indiana, being about one hundred miles in length, together with all and singular the rights of way, road-bed, made or to be made, its

track, laid or to be laid, between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, turn-tables, machine shops, buildings, erections, coal lands, and contract rights in any way now or hereafter appertaining to said described division of railroad, together with all the engines, cars, machinery, supplies, tools, and fixtures now or at any time hereafter held, owned, or acquired by the said party of the first part, for use in connection with its division aforesaid, with all its depot grounds, yards, sidings, turnouts, sheds, machine shops,
leasehold rights, and other terminal facilities now or here-
21 after owned or leased and enjoyed by the said party of the
first part, pertaining to said divisions, together with all and singular the powers and franchises thereto belonging, and the tolls, income, and revenue to be levied and derived therefrom.

To have and to hold the said granted premises unto the said party of the second part and its successors forever in trust nevertheless, and for the uses and purposes in this indenture expressed—that is to say:

First. If the interest due on any of the described issue of bonds and hereby secured shall not be paid by the party of the first part when the same becomes due, and shall so remain in arrears for six months after it is actually demanded at the place where the same is payable, as specified in the coupons given to evidence such interest, or in case the principal of said bonds, or any of them, shall not be paid at their maturity, then it shall be lawful for the party of the second part, or his successors in said trust for the time being, and it shall be the duty of such trustee, upon the request in writing so to enter of the holders of not less than one-half of the then outstanding
bonds of the issue hereby secured, and upon receiving satis-
22 factory indemnity for so doing, to forthwith demand, enter,
take, and maintain possession of all and singular the railroad premises and franchises hereby conveyed, and as the attorney-in-fact or agent of said party of the first part, by himself and agents or substitutes duly constituted, have, use, manage, operate, and enjoy the same and each and every part thereof to as full an extent as the said party of the first part might lawfully do, and shall make from time to time all needful repairs, alterations, and additions thereto, and receive all the tolls, income, and revenue thereof, and after deducting the expenses of said use, operation, reasonable repairs, alterations and additions, and the cost of taking possession, and fair compensation for the services of such trustee for such taking possesion and management while in possession, the said party of the second part or his successor for the time being shall apply the remaining revenue and income arising from the use of said mortgaged property and coming to his hand to the payment of the interest in default and maturing from time to time, satisfying the said coupons in the order of their several maturities, and thereafter apply the
residue upon the principal of said then outstanding bonds.

23 Second. And upon the further trust that if a six months'
default shall occur in the payment of either principal or interest of any of the bonds hereby secured, after such actual demand

as aforesaid, then it shall be lawful for the party of the second part, or said trustee for the time being, and upon the written request of the holders of a majority in amount of said bonds then outstanding, and upon receiving satisfactory indemnity as aforesaid, *he shall*, with or without entry as aforesaid, [to] cause all and singular the said premises, railway appurtenances, equipment, and franchises hereby conveyed to be sold as an entirety at public auction to the highest and best bidder, at the city of Chicago, Illinois, after giving at least sixty days' notice of the time, place, and terms of sale by advertisement in a newspaper of general circulation in the city of Chicago, and like advertisement in a newspaper of general circulation in the city of New York, and on such sale said party of the second part, or the trustee for the time being, shall make, execute, acknowledge, and deliver unto the purchaser or purchasers thereof a good and
sufficient deed, in fee-simple, conveying the said railroad
24 property and franchises so sold, which conveyance shall be a
perpetual bar in law and equity against the said party of the first part, its successors and assigns, and all persons claiming or to claim under them, of all right, title, interest, or claim of, in, or to the said premises and franchises, or any part thereof.

The said party of the second part, after deducting from the proceeds of sale the costs and expenses thereof, and a reasonable compensation to said trustee, and his attorneys and agents, for services in connection therewith, shall apply so much of the proceeds as may be necessary to the ratable payment of principal and the then accrued interest of all the said bonds, whether the said principal be then due or not; and if any proceeds of such sale remain in his hands after the full payment of the principal and accrued interest of all said bonds, then he shall render and pay over the same unto the party of the first part, or its successors or assigns:

Provided, however, That nothing hereinbefore contained shall in any way be construed to take away or interfere with the right of the party of the second part, after a six months' default in the payment
of the interest or principal of the bonds hereby secured, to
25 proceed, at his election, to institute legal proceedings in any
court of competent jurisdiction to foreclose this mortgage and procure a judicial sale of the property hereby conveyed.

Third. In case of any such taking possession or proceeding to sell the mortgaged premises for default of payment of interest, if the said party of the first part, before the said bonds shall become due and before such sale shall be made, shall pay and satisfy all interest then in arrears on all such outstanding bonds, and shall also pay and discharge all costs, expenses, and disbursements and reasonable compensation incurred by reason of such default or possession, then, upon evidence thereof to his satisfaction, the said party of the second part shall thereupon discontinue such proceeding and restore possession of the mortgaged premises to the party of the first part, to be thereafter held subject to these presents in like manner as if such default or entry had not occurred.

Fourth. The said party of the first part expressly covenants and agrees that it will, on demand, from time to time hereafter, execute,

acknowledge, and deliver unto the said party of the second part any
and all such further and other conveyances and assignments
26 as may be necessary and proper to fully convey to and not in
the party of the second part or the trustee for the time being
all such future-acquired depots, grounds, estate, equipment, and property as it may hereafter, from time to time, purchase for use in and upon the said northern division of said railroad which is intended to be hereby conveyed.

And the said party of the first part doth still further agree that it will, in case of any default in the payment by it, either of the principal or interest of any of its bonds hereby secured, forthwith, upon demand of the party of the second part or the trustee for the time being, surrender the full and peaceable possession of all and singular the premises hereby conveyed or intended to be [conveyed], including all the real and personal property by it acquired subsequent to the date of these presents for use in connection with its said northern division of railroad, and will also surrender all books of account, records, and papers used by it in and about the operation thereof; and it further agrees that it will not, in case of any such demand, entry, or sale, make any resistance or delay thereto, or make any application for an injunction or other legal process to stay such entry or proceedings.

27 Fifth. It is especially agreed that all of the said bonds to
be issued hereunder shall be upon an equality as far as regards security for the payment thereof by these presents, notwithstanding the same may be issued at different times, it being intended that this indenture shall operate as a security for all said bonds equally, ratably, and without preference, whether issued at the same or different times.

Sixth. It is agreed that each of the bonds hereby secured shall pass by delivery or by transfer registered on the books of the party of the first part, at its agency in the city of New York, and after a registration of ownership in such books, and duly certified on the back of any such bond by the transfer agent of the party of the first part, no transfer thereof shall be valid unless made upon the said books, unless the last transfer has been to bearer, in which event such bond may continue to be transferable by delivery. Any such bonds shall continue subject to such succession, registration, and transfers to bearer, at the option of the owner.

Seventh. This trust and the security hereby intended shall only extend to such bonds of this issue as shall be certified by said
trustee to belong to said issue and to be secured by this
28 mortgage, and when all said bonds and interest thereon shall
be paid or discharged the trustee hereby created shall cease, and the estate hereby granted to the party of the second part shall determine and become extinct, and the full right and title to the premises hereby conveyed shall revert in said party of the first part, without any further or other acknowledgement, satisfaction, reconveyance, re-entry, or other act.

And it is further agreed that unto such default and demand, as aforesaid, the said party of the first part shall have the right to maintain, keep, and hold possession of all and singular the property and franchises hereby granted, manage the same, and enjoy the rents, income, and revenue thereof.

Eighth. It is mutually agreed that the said party of the second
part and his successor or successors in the trust hereby created
shall only be accountable for reasonable diligence in the management
thereof, and shall not be responsible for the acts, omissions, or
defaults of any agent employed by him or them, and that the said
party of the second part, or any successor in said trust, shall be entitled
to demand, receive, and retain proper compensation for
29 every labor or service performed, and expense, damage, and
disbursement incurred by him or them in the discharge of
this trust, in case of default or taking possession or sale of the premises,
and that he or they shall not be liable in any manner for any
loss or damage which may happen, unless the same be occasioned
by his or their gross neglect or wilful*l* mal*pl*easance.

In case the said trust shall become vacant by reason of the incapacity, removal, or resignation of the said party of the second part, or any successor, [it] shall be lawful for the holders of the majority in amount of the bonds then outstanding to appoint a successor by writing by them signed, or for any court of record in any county through which said line of railroad runs to appoint such successor on the nomination in writing of not less than the holders of five hundred thousand dollars of said bonds then outstanding.

And upon such appointment being made, and the said trust being
accepted, any such successor or substituted trustee shall, without
further act or deed, become vested with all and singular the estate,
rights, and powers, and shall perform all the duties of trustee in
like manner and with the same effect as if it or he had
30 been named in this instrument as trustee.

In witness whereof the said Chicago and Great Southern Railway Company, by order of its board of directors, has hereto affixed its corporate seal and caused the same to be signed by its president and secretary, and the said trustee has hereto set his hand and its seal the day and year first above written.

THE CHICAGO AND GREAT SOUTHERN
RAILWAY COMPANY,
By —— ——, *President.*
—— ——, *Trustee.*
Attest: —— ——, *Secretary.*

31 And afterwards, to wit, at the November term of said court,
on the 4th day of April, 1885, before the Honorable William
A. Woods, judge, as aforesaid, the following proceedings were had
in the cause entitled "John Hack *et al. vs.* The Chicago & Great
Southern Railway Company *et al.*," numbered 7944, to wit:

Comes now the defendant, Henry H. Porter, by R. B. F. Peirce, McDonald, Butler & Mason, his solicitors, and files in this court a transcript of the proceedings had and papers filed in the above-entitled cause in the Jasper circuit court.

And the order appointing Shumway receiver, and the complaint of John Hack, and the order appointing Foster receiver, and the petition of Henry H. Porter for removal to the circuit court of the United States for the district of Indiana, as set out in said transcript from said Jasper circuit court, are in the words following, to wit:

32 *Order Appointing Shumway Receiver.*

STATE OF INDIANA, *Jasper County:*

In the Circuit Court. Oct. Term, 1884.

JOHN HACK, JAMES E. HALE, FREDERICK LASH, and CHARLES A. HAMMOND

vs.

CHICAGO AND GREAT SOUTHERN RAILWAY CO. and HARRY CRAWFORD.

Be it remembered that on this 27th day of October, A. D. 1884, before the Hon. Peter H. Ward, judge of the Jasper circuit court in Chambers, at Rensselaer, Indiana, come the plaintiffs in the above-entitled cause, by their counsel, William A. Staren and Simon P. Thompson, and likewise the defendants, by their attorney, Elisha Moore, Jr., and enter their full appearance to the action in writing, reading as follows (insert), and on motion of plaintiffs' attorney, and no objection being made, it is ordered and decreed by the court that Philip B. Sheumway be, and he is hereby, appointed receiver of all and singular the property, books, papers, assets, and effects of
the Chicago and Great Southern Railway Company, and is
33 directed to take into his custody and control, as the officer of
this court, the said line of railway in the complaint described, extending from Fair Oaks to Yeddo, together with all the equipments and appurtenances now thereon, whether belonging to said corporation or its contractor, and the said receiver is hereby directed and authorized by such agent as he may appoint to operate the said road and receive and disburse all the revenues thereof accruing after his taking possession, and to report his doings to this court at each term thereof.

The said receiver is hereby entrusted with all the usual powers of receivers in similar cases and is at liberty to apply to the court for instructions as to his duty.

Thereupon the said Philip B. Shumway tenders an undertaking, which is approved by the court, and he is directed and authorized, on filing his oath of office with the clerk, to enter upon his duties and continue therein until the further order of this court. The
clerk is ordered to enter this order in the order-book of this
34 court and issue a duly authenticated copy hereof to said Philip
B. Shumway, which shall be sufficient warranty for him.

PETER H. WARD,
Judge Jasper Circuit Court.

35 *Original Complaint. Filed in Jasper C't Oct. 27, 1884.*

Jasper Circuit Court. October Term, 1884.

STATE OF INDIANA, }
Jasper County, } *ss:*

John Hack and James E. Hale, who are partners under the style of Hack & Hale; Frederick Lash, and Charles A. Hammond complain of the Chicago & Great Southern Railway Company and say:

That said corporation was organized under the laws of the State of Indiana, and is authorized to locate, construct, and operate a line of railway from Lake Michigan to the Ohio river.

That the said line of railway is now partially constructed, with the rails laid thereon from Fair Oaks *thence* southwardly through the counties of Jasper, Newton, Benton, Warren, and Fountain *counties* to Yeddo, being about 80 miles in length; and upon about 40 miles of its line, between Yeddo and Brazil, in Clay county, the railroad had been surveyed, located, and a large amount of
36 grading done, and the right of way had largely been obtained thereon.

In the work of constructing the said line of railroad the said corporation has incurred divers debts and liabilities, and is justly indebted unto the firm of Hack & Hale in the sum of three thousand dollars and upwards, to the said Lash in the sum of two thousand dollars and upwards, and to the said Hammond in the sum of one thousand dollars and upwards.

The said corporation, in consequence of the recent financial stringency, has been compelled to suspend all its construction work and owes a considerable indebtedness, amounting in all to over $100,000, exclusive of bonds secured by mortgage, and the said company is in imminent danger of insolvency.

Many of the creditors of said corporation have instituted actions in different courts along the line and also in justice courts, and many other creditors are threatening to institute actions upon
37 their several demands, and where judgment is obtained do further threaten and intend to levy upon, seize, and sell the property of the corporation.

For over six months the completed portion of said railroad, between Fair Oaks and Yeddo, has been operated by daily trains carrying mail, passengers, express matter, and freight, and the same has been and is a public highway, in which all the citizens who rely upon the said road for transportation facilities have an interest in maintaining as an operated railroad.

The plaintiffs claim that the said corporate property aforesaid constitutes a trust fund for the common benefit of creditors, and that one of the main elements of its value consists in it being constantly maintained as an operated highway in the daily receipt of revenues, and that for the creditors to institute different actions and recover judgments and then seize portions of the property would, in effect, give them unjust preferences over other creditors
38 equally entitled, and would dismember the said property,

compel it to cease operations, and then and thereby the trust fund and its profits are in danger of being materially injured and practically lost, and, in consequence of such threatened action on the part of a portion of its creditors, the said corporation is in imminent danger of insolvency.

Henry Crawford is in possession and enjoyment of said corporate property as contractor, and he is made a defendant to answer to his interest therein.

The plaintiffs therefore sue in behalf of themselves and all other creditors of said company, and pray that an account may be taken of all claims against the said corporation, and that the same may be entered according to their proper priorities, and that pending the action a receiver may be appointed to protect and preserve the trust fund, so that it can be subject to the order of the court for the common benefit of all creditors.

The plaintiffs pray for such other and further relief as may 39 be necessary and proper in the premises.

WILLIAM A. STARIN,
Chicago, Ill.,
SIMON P. THOMPSON,
Solicitors for Complainants.

STATE OF INDIANA,
County of Jasper, } *ss*:

William A. Starin, being duly sworn, on oath says that the foregoing complaint is true in matter and in fact as therein stated.

WILLIAM A. STARIN.

Subscribed and sworn to before me this 27th day of October, 1884.

JAMES F. IRWIN,
Cl-rk Jasper Circuit Court.

40 *Order Appointing Foster Receiver.*

And now come all the plaintiffs in the above-entitled cause, by their attorneys, and come also all the defendants herein, by their attorneys, and on the motion heretofore made, to wit, on the 26th day of February, 1885, and taken under advisement by the court, to remove Philip B. Shumway, appointed by the Jasper circuit court receiver of said railway company on the 27th day of October, 1884, and the court being fully advised in the premises, finds that said Shumway has discharged the duties of his trust faithfully and efficiently, but, on account of his residence in another State and distance from the property, and being without the jurisdiction of the court, that it is for the best interests of all the parties that he be removed and another receiver appointed in his stead.

It is therefore ordered and decreed by the court that the said Philip B. Shumway be, and he is hereby, removed from his said trust as such receiver, and that William Foster, of Goodland, of the State of Indiana, be, and he is hereby, appointed as his successor in said trust, to whom the said Shumway is hereby ordered to turn over

41 the said railroad property and all books, papers, contracts, leases, and vouchers in his possession or under his control connected with said trust except such vouchers, books, papers, and accounts as may be necessary for said Shumway to use in closing up his accounts, and these the said Shumway shall deliver to the clerk of this court upon filing his final report, and also to pay over to his said successor the balance of all moneys remaining in the hands of said Shumway as such receiver; and the said William Foster is hereby directed to be sworn and to file his undertaking, with sureties, as such receiver according to law, payable to the clerk of this court, for the use of whom it may concern, to be approved by the court, and thereupon said William Foster, as such receiver, shall forthwith take possession of all the railroad property of said railway company and use, manage, and operate the same under the orders and direction of this court, and shall also receive all moneys
42 turned over to him by said Shumway, as hereinbefore ordered, and also shall receive and take possession of all books, papers, documents, pay-rolls, vouchers, bills receivable and payable, and everything in the possession and control of said Shumway as such receiver, giving to him, said Shumway, as such receiver, proper receipts therefor, and also shall take into possession, sue for, collect, and receive all other books, papers, documents, bills receivable and payable, choses in action, and property of every name and nature or kind of said railway company, wherever situate or found, belonging to said railway company, hereby giving and granting to said receiver full power and authority to proceed to take due and proper legal proceedings, either in law or equity, to accomplish the purpose of his said trust either in his own name as such receiver or in the name of said railway company, as he may be advised by his counsel, and also hereby giving and granting to said receiver all other usual powers of a receiver.

43 It is further ordered and decreed that said Shumway shall, during the present term of this court, file his final report as receiver, and upon the approval thereof by the court that the said Shumway shall be from all liability discharged, and his undertaking filed as such receiver, with all liabilities thereunder, be cancelled.

And the court, as a condition of the appointment [of] said receiver, reserves the right to make any further order respecting the priority and payment of labor and supply claims accruing pri or to the receivership herein as may hereafter seem and appear to the court to be equitable and just.

It is further ordered and decreed by the court that the change in said receivership, so far as the question of time in closing the accounts of said Shumway and commencing his accounts on the part of said Foster as such receiver, shall be taken and considered as of the beginning of March 6th, 1885.

And said Foster as such receiver shall, during the first
44 week of each succeeding term of this court, file a full report of his doings as such receiver and of the operations of said railway.

And now the said William Foster appears in open court and files his written undertaking as such receiver, payable to the clerk of this court, for the use of whom it may concern, with Charles W. Hartley, George Hardy, Solomon C. Spoor, & Ziba F. Little, as sureties thereon, which undertaking is now examined and approved by the court and the court's approval endorsed thereon.

45 *Petition for Removal to the Circuit Court of the United States, District of Indiana.*

STATE OF INDIANA, }
Newton County, } *ss:*

In the Circuit Court of said County. February Term, 1885.

JOHN HACK *et al.*
vs.
THE CHICAGO AND GREAT SOUTHERN RAILWAY COMPANY.

To the said Newton circuit court:

Your petitioner, Henry H. Porter, shows to this honorable court that he is interested in the above-entitled suit and a necessary party, all of which is fully shown by his petition to be made a party thereto and the answer and cross-bill by him tendered in connection with said petition, all of which remain *of* file in this court, and to which, for greater certainty, your petitioner refers your honor.

That the amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars; 46 that your petitioner was at the commencement of this suit, and still is, a citizen and resident of the State of Illinois; that John Hack, James E. Hale, Frederick Lash, and Charles A. Hammond, the original plaintiffs in said suit, were, at the commencement of the same, and still are, residents and citizens of the State of Indiana; that The Chicago and Great Southern Railway Company, defendant, was at the commencement of said suit, and still is, a corporation created and existing under the laws of the State of Indiana, and a citizen of the State of Indiana; that the other of said parties to the said suit are, or claim to be, unsecured or floating-debt creditors of the said railway company; that in the said suit above mentioned a controversy exists which is wholly between citizens of different States, and which can be fully determined as between them, to wit, a controversy between your said petitioner and the Chicago and Great Southern Railway Company, which controversy is fully disclosed in the cross-bill or complaint of your 47 petitioner tendered and offered to be filed in said cause, and which is part of the record in this cause. The amount in dispute in said controversy exceeds, exclusive of costs, the sum of five hundred dollars; and your petitioner offers herewith a bond with good and sufficient surety for his entering in said circuit court of the United States, on the first day of next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto; and he prays this honorable court to proceed no further herein, except to make the order of removal required by law and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the district of Indiana.

McDONALD, BUTLER & MASON,
R. B. F. PIERCE,
Att'ys for Henry H. Porter.

48 STATE OF INDIANA, } *ss:*
Marion County, }

We, Joseph E. McDonald and Robert B. F. Pierce, being duly sworn, do say that we are attorneys for said petitioner, Henry H. Porter, in the above-entitled cause; that we have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true as we verily believe.

JOSEPH E. McDONALD.
ROBERT B. F. PIERCE.

Subscribed by the said Joseph E. McDonald and Robert B. F. Pierce in my presence, and by them sworn to before me this 12th day of March, A. D. 1885.

[L. S.] GEORGE W. WOODS,
Notary Public in and for Marion County,
State of Indiana.

STATE OF INDIANA, } *ss:*
Newton County, }

Comes now Henry H. Porter, who, being duly sworn, upon his oath says that the matters and facts stated in the above and foregoing petition are true in substance and in fact as he verily believes. 49

HENRY H. PORTER.

Subscribed and sworn to before me this 13th day of March, 1885.

JNO. G. DAVIS,
Clerk Cir. Court.

50 And afterwards, to wit, at the November term of said court, on the 9th day of April, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings were had in the above-entitled cause, to wit:

Comes now Volney Q. Irwin, by Kennedy & Kennedy, his solicitors, and files his cross-bill herein in the words following, to wit:

51 Volney Q. Irwin, who has been summoned as a defendant herein, by way of cross-complaint against the plaintiff and also against his codefendant, The Chicago and Great Southern Railway Company, says that on the 9th day of November, 1881, he entered into a written contract with the said Chicago and Great

Southern Railway Company to do the grading, grubbing, and excavating on the said road of his codefendant, The Chicago and Great Southern Railway Company, from a point near the town of Oxford, in Benton county, Indiana, to a point known as Independence or Kikapoo Grade, in Warren county, Indiana, a distance of some fourteen miles, which contract is in words and figures as follows, to wit:

(Here insert "Exhibit A.")

That pursuant to said contract he commenced work on said road
near said town of Oxford on the 10th day of November, 1881, and
completed the work and turned the same over to said railroad
company on the 15th day of September, 1883; that at the time he
so commenced work on said road under said contract no
52 work whatever had been done on said road between said
town of Oxford and said Independence or Kikapoo Grade,
in said Warren county, Indiana, nor had said railroad company
located or procured the right of way for its said road through either
of said counties or any part or parts thereof, nor had it filed in
either of said counties any profile of its said road, nor did it locate its
said road in said county of Benton or said county of Warren and
file a profile thereof till long after the execution and recording of
the plaintiff's said mortgage; that neither at the time he entered
into said contract nor at the time he commenced work thereunder
on said railway had said mortgage sued on by plaintiff herein been
recorded in either of said counties above named, nor had he any
knowledge or notice thereof at the time he commenced work under
said contract. And said cross-complain[an]t says that under said contract
he did all of the grubbing, grading, and excavating between
said points mentioned in his said contract, which work, at the
contract price, amounted to $55,000.00, and that said company
53 paid all of said amount due for said work but the sum of
$12,000.00; that on the — day of October, 1883, and within
sixty days after the time he completed said work, he filed in the
office of the recorder of said Warren county a notice of his intention
to hold a lien on all of said grades, embankments, and excavations
so constructed and made by him under said contract to secure
said balance so due him from said company for such work, and that
on the — day of October, 1883, he filed a copy of said notice in the
recorder's office in said county of Benton, which said notice is in
words and figures as follows, to wit:

(Here insert Exhibit "B," filed herewith.)

And said cross-complain[an]t further avers that on the 22nd day
[of] October, 1884, he employed attorneys and commenced his suit in
the Warren circuit court, in said State of Indiana, to recover a judgment
for said balance so due him from said company and to foreclose
said lien on said line of railway in said county of War-
54 ren, which said suit was submitted to the court upon com-
plaint by the plaintiff and answered by the defendant, and
resulted in a judgment in favor of this cross-complainant against

said railway company for the sum of $11,781.16, and cost of suit, taxed at $——, and the foreclosure of said lien, and order by said court for the sale of said line of road in said county of Warren, from the line between said counties of Warren and Benton to said Independence or Kikapoo Grade, in said county of Warren, which judgment and decree were rendered on the — day of April, 1884, and cross-complainant says that said judgement for said amount and said decree for the sale of said grades, embankments, and excavations, and said line of road in said county, were duly rendered and made in said court, and that said judgement is unpaid. He further avers that on the — day of ——, 1884, he employed counsel and commenced a suit in the said county of Benton by filing his complaint and causing summons to issue thereon to foreclose his
55 said lien on all of said line of road in said county of Benton from said town of Oxford to the line between said counties of Warren and Benton, which suit is still pending in the circuit court of said county of Benton.

And said cross-complainant further avers that at the time the mortgage which plaintiff is seeking to foreclose was executed and recorded in said county of Benton and said county of Warren his codefendant, The Chicago and Great Southern Railway Company, had not finally located said road between said points mentioned in said contract, nor had said company sold any of said bonds which said mortgage was executed to secure; and said cross-complainant further avers that none of said bonds were sold till long after said work was done, nor until after he had filed his said notice of lien in said counties of Benton and Warren.

And cross-complainant further avers that said bonds were issued without any consideration whatever, and that the present holders thereof had knowledge and notice that said bonds were then
56 and there without consideration. And cross-complainant avers that there is now due him on said claim, for principal and interest and attorney's fees, the sum of $15,000.00; wherefore said cross-complainant demands judgement and asks that the court will order, adjudge, and decree that his said claim is a lien on all said line of road between said points mentioned in said contract, prior and superior to said mortgage, and asks that the court will further order and decree, if it should decree a foreclosure of said mortgage, that when said road is sold the proceeds thereof be applied first to the payment of the sum so due to this cross-complainant, before anything is paid on said bonds, and said cross-complainant prays for whatever relief he may be entitled to in the premises.

KENNEDY & KENNEDY, &
STRAIGHT, WILEY & CARTER,
Att'ys for Volney Q. Irwin.

The cross-complainant, Volney Q. Irwin, propounds to the
57 plaintiff the following interrogatories, and asks that he may be required by the court to answer the same under oath, to wit:

1. What amount of the bonds provided for in the mortgage set up in your complaint herein have been sold?

2. If any of said bonds have been sold, state to whom they were sold, and at what price.

3. Who now owns the bonds provided for in said mortgage which have been sold?

KENNEDY & KENNEDY, &
STRAIGHT, WILEY & CARTER,
Att'ys for Volney Q. Irwin.

58 *Contractor's Notice of Lien.*

Notice is hereby given to all whom it may concern that the undersigned, who made a contract with the "Chicago and Great Southern Railway Company," constructed all the embankments, and made all the excavations on said road from a point near the town of Oxford, in Benton county, Indiana, to a point near Attica, in Fountain county, Indiana, and for which said railway company now owes him the sum of fifty-seven thousand and two hundred ($57,200) dollars, intends to hold a lien on that part of said road-bed constructed by him, and the track laid thereon to secure said debt, said part of said road being more particularly described as follows, to wit:

Beginning at a point fifteen hundred feet south of where said road crosses the "Lake Erie and Western railway," track in Oak township, Benton county, Indiana, and running thence southward where said railway crosses the Independence Grade or dirt road in the east half of the southeast quarter of section thirty, in township twenty-two north, of range seven west, in Warren township,
59 Warren county, Indiana.

Given under my hand this Oct. 17, 1883.

VOLNEY Q. IRWIN.

60 *Chicago & Great Southern Railway Co.*

This agreement, made and entered into this 9th day of November, A. D. one thousand eight hundred & eighty-one, by and between V. Q. Irwin, of Crawfordsville, State of Indiana, party of the first part, and the Chicago & Great Southern Railway Company, party of the second part, witnesseth:

That for and in consideration of the payments and convenants hereinafter mentioned to be performed and fulfilled by the party of the second part, said party of the first part does hereby agree and bind himself, his heirs, executors, and administrators, to perform all the labor and furnish all the material necessary to fully compleat in the most substantial and workmanlike manner and to the satisfaction and acceptance of the engineer of the company the clearing & grubbing, grading, including side tracks and depot grounds, ditching, changing of streams and highways, together with such other work as may be required by the engineer of the party of the
61 second part, to prepare the road-bed and structures for the reception of the ties and rails on that portion of the line of the Chicago & Great Southern Railway commencing at or near Oxford in Oak Grove township, Benton county, Indiana, and terminating

at the Independence grade, in Warren township, Warren county, Indiana, according to the directions of said engineer and the annexed specifications and the following conditions, viz:

First. The work shall be commenced within ten days after the execution of this contract, and shall be fully compleated in accordance with the terms of this contract on or before the first day of January, 1882, with a reasonable allowance of time beyond that date for bad weather.

Second. The said work shall in all particulars be made to conform
to the plans, specifications, and directions of the chief engineer and
the engineer in charge of the work, by whose measurements and
calculations the quantities and amounts of the several kinds
62 of work performed under this contract shall be determined,
and who shall have full power to reject and condemn all
work or materials which in his opinion do not conform to the spirit of this agreement, and shall decide every question which may or can arise between the parties relative to the execution thereof, and his decision shall be conclusive and binding upon both parties hereto, and no right of action shall arise hereon except upon and after such an award by said engineer.

Third. The several stipulations of this contract shall be performed in such manner that the party of the first part shall not be relieved from the immediate charge and responsibility of the work, and no part thereof shall be transferred or sublet to other parties unless by the sanction and approval in writing of said second party or their engineer.

Fourth. If any foreman or laborer employed by the contractor
shall, in the opinion of the engineer, execute his work in an unfaithfull,
unskillful manner or in any respect prove remiss or inade-
63 quate to the performance of his duty or disrespectful or riotous
in his conduct he shall forthwith, by the direction of the engineer,
be discharged, and no person shall be employed on the work in the capacity of foreman or overseer who has been previously discharged for either or any of the above reasons.

Fifth. If any damage shall be done or permitted by the party of the first part or by workman in his employ to the owners or occupants of land or other property adjoining or in the vicinity of the work herein contracted to be done, the engineer shall have the right to estimate the amount of such damage and to pay the same to such owner or occupant, and amount so paid shall be deducted from the value of the work done under this contract.

Sixth. The said party of the first part further agrees not to keep
or suffer to be kept or used any ardent spirits in any house or tene-
ment built or occupied by him or by any workman in his employ
or by any boarding-house keeper under him on or near said
64 work, and to discharge from his employment any workman,
laborer, or boarding-house keeper who is guilty of a breach
of this agreement when required to do so by the engineer.

Seventh. All roads to quarries, quarry lease roads, for hauling material and ways to and from the work; also all grounds for the deposit of material (except for waste or spoiled banks and such other

material as may be reserved for the company)—. The erection of shanties or yards for the performance of work are to be procured and paid for by the party of the first part at his own expense. The aforesaid party of the second part hereby agrees and binds himself that upon the certificate of the chief engineer that the work contemplated to be done under this contract has been fully compleated by the party of the first part they will pay said party of the first part for the performance of the same in full for materials and workmanship as follows, to wit, twenty-five dollars per acre for both grubbing and clearing; for excavation and embankment, six-
teen (16) cents per cubic yard; the berms to be no less
65 than from four (4) feet and as much greater as may be ordered
by [the] engineer of the party of the second part. It is further agreed by the party of the second part that estimates shall be made during the progress of the work on or about the first of each month, and that payment shall be made by said second party upon the estimate & certificate of the engineer of the party of the second part on or before the fifteenth day of each month for the amount and value of work done and materials furnished during the previous month, 10 per cent being deducted and retained by the company until the final completion of the work embraced in this contract, when all sums due the party of the first part shall be fully paid and this contract considered cancelled. For the purpose of avoiding all cause of difference or dispute between the parties to this contract relative to its true intent and meaning and for the purpose of adjusting in an
amicable manner any difference that may or can arise rela-
66 tive thereto, it its mutually understood and agreed as follows,
to wit:

First. The party of the second part hereby agrees to procure and furnish the lands for right of way, together with all necessary extra widths for burrowing pits and waste or spoil banks, said second party reserving the right at any time to change the location of the line and the establishment of the grades; and it is hereby mutually agreed that no extra charge will be claimed or allowed on account of such change in the line or grade, the prices herein mentioned being considered as full compensation for the various kinds of work agreed to be performed.

Second. Whenever work is required to be done which is not now contemplated or covered by the price herein mentioned the engineer shall fix such prices for the work as he shall consider just and equi-
table, and said parties shall abide by such prices, provided the
67 party of the first part enter upon and commence such work
with a full knowledge of the price so fixed by the engineer. But if the party of the first part declines executing the work at the prices fixed by the engineer then the party of the second part may enter into contract with any other person or persons for its execution the same as if this contract had never existed, and if extra work or work not provided for in this contract is performed by the contractor without protest or notice in writing to the engineer before such prices shall have been fixed for such work then the engineer shall estimate the same at such prices as he shall deem just and rea-

sonable, and his decision shall be final and the contractor shall accept of such prices in full satisfaction of his demands against the party of the second part for said extra work; but nothing shall be deemed extra work that can be measured and estimated under the terms of this contract.

Third. If the party of the first part refuses or unreasonably
68 neglects to remedy an imperfections which may be pointed
out by the engineer, or in any manner violate the conditions of this contract, so that, in the judgment of the engineer, there shall be just grounds for apprehension that the work will not be compleated in the manner and within the time specified, then it shall be the duty of the engineer to serve a written notice upon said party, setting forth the ground for his apprehension and specifying the manner, together with a reasonable time in which said party may cause such ground to be removed, and if, at the expiration of such time, said grounds of apprehension be not removed, then full power and authority is hereby mutually vested in said engineer to declare this contract forfeited, and, on such declaration being given in writing by the engineer to the parties hereto, this contract shall determine immediately, and the said party of the second part may forever retain the reserved percentage on account of the considera-
69 tion for damages which they may have sustained by reason
of the forfeiture of this contract, or, as an alternative to a declaration of forfeiture, the party of the second part shall, on written report of the engineer that apprehensions are entertained that this contract will not be compleated in the time and manner herein stipulated, have the right to take such measures as may be deemed by the engineer necessary to insure the compleation of the work in the time and manner herein stipulated, and to deduct from the monthly and final estimate of work done under this contract such sums *sums* as may be required to defray the expenses of such measures among the measures which, under such circumstances, may be resorted to on the execution by their own agents of such portions of the work as the said engineer may select or the requirement that the party of the first part shall provide for and employ in the most efficient manner such additional men, carts, teams, &c., &c., as the party of the second part may furnish, in which case said
70 party of the first part agrees to employ said men, carts, teams,
&c., in the manner directed by the engineer, who shall have the right to retain from the estimate an amount sufficient to pay such men, carts, teams, &c.

Fourth. It is further mutually agreed between the parties hereto that nothing herein shall be construed into a liability for damages on the part of the second party hereto should the whole or any part of the work embraced in this contract be for any reason suspended or delayed, and in no event will the party of the first part have a right to claim extra compensation or price for damage arising from such suspension or delay in the operation of said work, it being, however, understood and agreed that the party of the first part are to have an extension of time for the compleation of the work embraced in this contract equal to any delays on the part of the second party on account of right of way or any other reason.

In witness we hereunto set our hands and seals this 9th day of November, A. D. 1881.

V. Q. IRWIN.
THE CHICAGO & GREAT SOUTHERN RAILWAY CO.,
By D. H. CONKLIN, *Super'nt.*

Witness:
R. A. HAM-LTEN.

71 And afterwards, to wit, at the November term of said court, on the 18th day of April, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings were had in the above-entitled cause numbered 7944, to wit:

Comes now the Smith Bridge Company by E. W. Tollerton, its solicitor, and by leave of court files its intervening petition herein, in the words following, to wit:

72 To the judges of said court:

The Smith Bridge Company, having been made a party herein by order of said court, with leave to file an intervening petition, now comes and represents that your petitioner is a corporation duly organized and incorporated under and by virtue of the laws of the State of Ohio, and is a citizen of the said State of Ohio.

And your petitioner further represents that the defendant, The Chicago and Great Southern Railway Company, is a corporation created, organized, and doing business under and by virtue of the laws of the State of Indiana, and was so created and organized with authority to build and operate a railroad in said State; that under and by virtue of the authority so granted the said defendant proceeded to and has constructed, and now operates by a receiver duly appointed by the courts of said State, a line of railroad commencing at the village of Fair Oaks, in the county of Jasper, in the said State of Indiana, and thence extending through the counties of Jas-
73 per, Newton, Benton, Warren, and Fountain to the village of Yeddo, in said county of Fountain, said line being entirely within the limits of said State of Indiana.

Your petitioner further says that after the incorporation of said defendant railroad company as aforesaid, and on the 26th day of October, 1882, your petitioner and said defendant entered into a certain agreement in writing, a true copy of which agreement is attached io this intervening petition, marked Exhibit "A," and made a part hereof; that under and by virtue of said written agreement your petitioner agreed to construct and build for the defendant railroad company, on its line of railway, a certain bridge over and across the Wabash river, in the county of Warren aforesaid, of the pattern, style, and dimensions specified therein; and your petitioner says that the said defendant railroad company agreed on its part to pay your petitioner for building and constructing said bridge, of the material, style, and dimensions provided for in said contract, the sum of thirty-eight dollars per lineal foot, to wit, the sum of thirty-four thousand two hundred dollars.

74 Your petitioner says that said bridge was to be built and completed under the inspection and approval of the chief engineer of the defendant railroad company; that said engineer was to make estimates of the value of the work done and the material furnished for the construction of said bridge each month, and that your petitioner was to be paid by the said defendant railroad company the amount of such estimates so made by said engineer, and as the same were made, less ten per cent. thereof to be retained by said railroad company until the completion of said bridge.

Your petitioner further says that it furnished the material, constructed and completed said bridge in all respects as required by the provisions and terms of said contract, and that said material and work were inspected and accepted by the chief engineer of said railroad company, and that said bridge, when completed, was in like manner inspected and accepted, and final estimates declared.

75 Your petitioner further says that it was also agreed by and between your petitioner and said railroad company, under the provisions and terms of said contract, that at the time said bridge should be completed and the final estimates made then the balance due for the construction of said bridge under said contract should be paid to your petitioner, and, upon the payment of said balance of the purchase and construction price of said bridge, the title to said bridge and bridge material should pass to and rest in said railroad company.

Your petitioner says that by the express terms of said contract the title to said bridge and bridge material should be and remain in your petitioner during the construction thereof, and until the contract price should be fully paid, as the sole and individual property of your petitioner; and that, upon a failure or default in the payment of the contract price for said bridge, upon its completion, your petitioner was to have the right to remove said bridge and bridge material.

76 Your petitioner further says that it has never waived its rights and title to or property in said bridge and bridge material, but, on the contrary, your petitioner, upon the completion of said bridges, to wit, on the 24th day of January, 1884, notified the said defendant railroad company in writing, a copy of which notice is hereto attached, marked "Exhibit B," and made a part hereof, that your petitioner would retain possession and control of said bridge until the purchase price should be fully paid, as provided in said contract, and that said railroad company would not be allowed to use said bridge in the operation of its said road until said payment was fully made, and your petitioner says that whatever possession and use the said railroad company has had of said bridge was and is unauthorized and without the consent of your petitioner.

Your petitioner says that there is due and unpaid on the purchase price of said bridge the sum of seventeen thousand three hundred and eighty-seven dollars and fifty-four cents, with interest thereon at 8 per cent. from March 3rd, 1884. 77

Your petitioner further says that after the incorporation of said defendant railroad company, as aforesaid, and on the 24th day of July, 1883, your petitioner and said defendant entered into a second and further agreement in writing, a true copy of which agreement is attached to this intervening petition, marked Exhibit "C," and made a part hereof; that under and by virtue of said second agreement your petitioner agreed to construct and build for said defendant railroad company, on its line of railway, a certain bridge over and across Pine creek, in the county of Warren aforesaid, of the pattern, style, and dimensions specified therein; and your petitioner says that said defendant railroad company agreed on its part to pay your petitioner for building and constructing said bridge of the material, style, and dimensions provided for in said contract the sum of thirty-five dollars per lineal foot, to wit, the sum of five thousand two hundred and fifty dollars. 78

Your petitioner says that said bridge was to be built and completed under the inspection and approval of the chief engineer of the said defendant railroad company; that said engineer was to make monthly estimates of the value of the work done and the material furnished for the construction of said bridge, and that your petitioner was to be paid by the said defendant railroad company the amount of such estimates so made by said engineer and as the same were made, less ten per cent. thereof, to be retained by said railroad company until the completion of said bridge.

Your petitioner further says that it furnished the material, constructed and completed said bridge in all respects as required by the provisions and terms of said contract, and that the said material and work were inspected and accepted by the chief engineer of said railroad company, and that said bridge, when completed, was in like manner inspected and accepted and final estimates declared. 79

Your petitioner further says that it was agreed by and between your petitioner and said railroad company under the provisions and terms of said contract that at the time said bridges should be completed and the final estimates made then the balance due for the construction of said bridge under said contract should be paid to your petitioner, and that upon the payment of the said balance of the purchase price of said bridge and bridge material the title thereto should pass to and vest in said railroad company.

Your petitioner says that by the express terms of said contract the title of said bridge and bridge material should be and remain in your petitioner during the construction thereof and until the contract price should be fully paid, as the sole and individual property of your petitioner, and that upon a failure or default in the payment of the contract price for said bridge upon its completion your petitioner was to have the right to remove said bridge and bridge material. 80

Your petitioner says that it has never waived or released its title and right to or property in said bridge and bridge material, but, on the contrary, your petitioner, upon the completion of said bridge, to wit, on the 26th day of January, 1884, notified the said defendant railroad company in writing, a copy of which notice is hereto attached, marked Exhibit "B," and made a part hereof, that your petitioner would retain possession and control of said bridge until the purchase price should be fully paid, as provided in said contract, and that said railroad company would not be permitted to use said bridge in the operation of its said road until said purchase price was fully paid; and your petitioner says that whatever possession and use the said railroad company has had of said bridge was and is unauthorized and without the consent of your petitioner.

81 Your petitioner says that there is due and unpaid on the purchase price of said bridge the sum of four thousand and fifty dollars, with interest thereon at 8 per cent. from March 3rd, 1884.

Wherefore your petitioner prays that the court may take an account of and determine the amount due and owing to your petitioner for the construction and purchase price of said bridges aforesaid; that the right and title of your petitioner in and to said bridges and bridge material may be protected and declared by this court to be superior to the claims of all other parties; that the priorities of the various liens and equities in and to said railroad property may be determined and adjusted, and that, if necessary for the protection and enforcement of your petitioner's rights aforesaid, the said railway line, together with the appurtenances thereto belonging, may be ordered to be sold according to law and the proceeds thereof distributed according to law and equity, and for all such other 82 and further relief in the premises as the nature of the circumstances of this case may require and to this honorable court shall seem meet.

C. W. TOLERTON,
Solicitor for the Smith Bridge Company.

UNITED STATES OF AMERICA, *District of Indiana.*

STATE OF OHIO,
Lucas County, } *ss:*

Wm. S. Daly, being duly sworn, says that he is secretary of the Smith Bridge Company, the above petitioner; that he is acquainted with the contents of the foregoing intervening petition, and that the matters and things therein stated are true in substance and in fact.

WM. S. DALY.

Sworn to and subscribed before me this 8th day of April, 1885.

FREDERICK L. GEDDES,
Notary Public in and for Lucas County, Ohio.

83 EXHIBIT "A."

This agreement, made and entered into this 26th day of October, 1882, by and between the Smith Bridge Company, of Toledo, Lucas

county, in the State of Ohio, party of the first part, and the Chicago
and Great Southern Railway Company, a corporation formed under
and pursuant to the laws of the State of Indiana, party of the second
part, witnesseth: That whereas the party of the first part has this
day and does by these presents contract and agree to construct and
build for the party of the second part a bridge over and across the
Wabash river at or adjacent to the town or city of Attica, in the
State of Indiana, consisting of six (6) spans of one hundred and fifty
(150) feet each, of the pattern and style known as the Pratt combination
truss, with the Smith improvement, of the capacity of thirty-
five hundred (3,500) pounds per lineal foot on a factor safety
84 of five (5), all in accordance with the plans and specifications
hereunto attached and marked Exhibits "A" and "B," and
referred to and made a part of this agreement, to be fully completed,
including the track stringers ready to receive the ties and placed
upon the piers and abutments prepared to receive the bridge constructed
by the party of the second part in the Wabash river at
Attica aforesaid; for which bridge the said party of the first part
is to receive the sum of thirty-eight ($38) dollars per lineal foot,
making the sum of thirty-four thousand and two hundred ($34,200.00)
dollars for said bridge, upon the terms and conditions hereinafter
contained.

And the party of the second part agrees upon its part to pay said
party of the first part said sum of thirty-eight ($38.00) dollars per
lineal foot, or in all the sum of thirty-four thousand and two hundred
($34,200.00) dollars, for such bridge, it being understood
85 that said bridge is to be in all respects first class, and to be
made of good material, subject to inspection and approval of
the engineer in charge of said work. Payments to be made as follows,
except otherwise agreed by the parties hereto:

On or about the first of each and every month the party of the
second part shall, by its chief engineer, cause estimates to be made
of the amount and value of the bridge material and work done on
the same, delivered at the place of erection of said bridge, and also
estimates of the amount and value of the bridge as placed in position;
and the party of the second part shall pay the value of such
estimates, less ten per cent. retained until the bridge is fully completed,
and the money due on such estimates to be paid on or about
the 15th of each month; upon final estimate and completion of the
bridge the balance due thereon is to be paid in accordance with the
foregoing contract and price of said bridge; at which time
86 the title of said bridge is to vest in said party of the second
part, but during the construction of said bridge and until the
contract price shall have been fully paid the title of said bridge and
bridge material shall be and remain in the party of the first part as
their individual property, and in default of payment of the contract
price of said bridge the party of the first part reserves the right to
remove said bridge and bridge material.

CHICAGO AND GREAT SOUTHERN
RAILWAY COMPANY.
By H. CRAWFORD, Jr., *Sec'y & Treas'r.*

87 EXHIBIT B.

To Henry Crawford, president, and F. H. Peters, engineer, of the Chicago and Great Southern Railway Company:

You are hereby notified that the Smith Bridge Company will retain possession and control of the bridges built by said company on the line of said railroad over Pine creek and the Wabash river, in the State of Indiana, until said bridges are entirely paid for as provided in the contract.

And said railroad company is hereby notified that it is not allowed to use said bridges in the operation of its road until the payment for the bridges is fully made.

January 24th, 1884.

THE SMITH BRIDGE COMPANY,
By —— ——.

Served a copy of this notice on said Henry Crawford, Sr., president, this 26th day of January, 1884.

P. E. LANE.

Subscribed and sworn to before me this 25th day of January, 1884.

D. HARRY HAMMER,
Notary Public.

88 EXHIBIT C.

This agreement, made and entered into this 24th day of July, 1883, by and between the Smith Bridge Company of Toledo, Lucas county, in the State of Ohio, party of the first part, and the Chicago and Great Southern Railway Company, a corporation formed under and pursuant to the laws of the State of Indiana, party af the second part, witnesseth:

That whereas the party of the first part has this day and doth by these presents contract and agree to construct and build for the party of the second part a bridge over and across Pine creek at or near the town or city of Attica, in the State of Indiana, consisting of one (1) span of one hundred and fifty (150) feet, of the pattern and style known as the Pratt combination truss, with the Smith improvement, of the capacity of thirty-five hundred (3,500) pounds per lineal foot, on a factor safety of five (5), all in accord-
89 ance with the plans and specifications hereunto attached, which are to be a duplicate of the spans erected over the Wabash river at Attica, Indiana, built by the Smith Bridge Company; for which bridge the party of the first part is to receive the sum of thirty-five ($35.00) dollars per lineal foot, making the sum of fifty-two hundred and fifty ($5,250.00) dollars for the said bridge, upon the terms and conditions hereinafter contained; and the party of the second part agrees upon its part to pay said party of the first part said sum of thirty-five ($35.00) dollars per lineal foot, or in all the sum of fifty-two hundred and fifty ($5,250.00) dollars, for said bridge—

It being understood that said bridge is to be in all respects first class and to be made of good material, subject to inspection and

approval of the engineer in charge of said work. Payments to be made as follows, except otherwise agreed by the parties hereto: On or about the first of each and every month the party of the
90 second part shall by its chief engineer cause estimates to be made of the amount and value of the bridge material and work done on the same, delivered at the place of the erection of said bridge, and also estimates of the amount and value of the bridge as placed in position, and the party of the second part shall pay the value of such estimates, less ten per cent. retained until the bridge is fully completed, and the money due on such estimates to be paid on or about the 15th of each month. Upon final estimate and completion of the bridge the balance due thereon is to be paid in accordance with the foregoing contract and price of said bridge, at which time the title of said bridge is to vest in said party of the second part; but during the construction of said bridge and until the contract price shall have been fully paid, the title of said bridge and bridge material shall be and remain in the party of the first part as their individual property, and in default of payment of the contract price of said bridge the party of the first part reserves the
91 right to remove said bridge and bridge material.

CHICAGO AND GREAT SOUTHERN
RAILWAY COMPANY,
By HENRY CRAWFORD, *Pres.*

92 And afterwards, to wit, at the November term of said court, on the 18th day of April, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings were had in the above-entitled causes, numbered 7932 and 7944, to wit:

Now on this 18th day of April, 1885, comes Henry H. Porter, one of the defendants in the above-entitled cause, and shows to the court that heretofore, to wit, on the 9th day of March, 1885, he brought in this court his original suit for the foreclosure of the mortgage covering and conveying the railroad and property described in the above-entitled cause, said original cause being entitled "Henry H. Porter *vs.* The Chicago & Great Southern Railway Company and others," and being numbered 7932 on the present docket of this court; that after the bringing of said suit in this court the said above-entitled cause of "Hack *et al. vs.* The Chicago & Great Southern Railway Company *et al.*" has been transferred from the Newton circuit court to this court, the same being now a pending cause upon the docket of this court and numbered 7944; that both of said causes involve the same property, to wit, the Chicago & Great Southern railway and property; that said Henry H. Porter is complainant in said cause originally brought in this court and is one of the defendants in said cause transferred from the Newton circuit court; and said Porter now moves the court to consolidate said two causes, the said consolidated cause to proceed under the style and title of "Henry H. Porter *vs.* The Chicago & Great Southern Railway Company and others, consolidated cause;" and, the court having considered said motion, and the parties in interest being

present in court and appearing to said motion, and the court
93 being duly advised in the premises—

It is ordered that the said two above-named causes be, and the same are hereby, consolidated, the said consolidated cause to proceed under the style and title of "Henry H. Porter *vs.* The Chicago & Great Southern Railway Company *et al.*, consolidated cause." It is further ordered that the pleadings, petitions, cross-bills, answers, and orders heretofore filed and entered in either of said two causes shall stand and be and remain as pleadings, petitions, cross-bills, answers, and orders in and to said consolidated cause.

And at the same time, on said 18th day of April, 1885, before said judge, the following further proceedings were had in the above-entitled cause, to wit:

94 The motion of Henry H. Porter, one of the defendants in the suit of John Hack *et al.* against the Chicago & Great Southern Railway Company and others, filed by him therein on the 17th day of April, 1885, for the removal of William Foster as receiver of the defendant corporation, coming on now to be heard by the court, it is shown to the satisfaction of the court that due notice of said motion has been served on said Foster, and the court having considered said motion and being convinced that on account of age and infirmity said Foster is and will be unable to discharge with satisfactory efficiency the duties of receiver herein:

It is now, therefore, ordered by the court that said Foster be, and he is hereby, removed from his trust as such receiver; and, on motion of said Henry H. Porter, who is also the complainant herein, it is further ordered that George C. Kimball be, and he is hereby, appointed receiver in the place and stead of said Foster and as his successor in said trust.

And it is further ordered by the court that said Kimball, upon giving bond in the sum of thirty thousand dollars and quali-
95 fying as such receiver, is authorized and directed to take immediate and full possession of the property, records, bonds, papers, rights, and franchises of and belonging to said defendant corporation, and to exercise all the powers incident to said receivership under the order of this court.

And it is further ordered by the court that said Foster immediately surrender his trust as aforesaid to said Kimball, and that as soon as practicable said Foster make to this court a full report of his doings in his said trust.

And said George C. Kimball now files his bond in the penalty of $30,000, with Henry H. Porter and Robert B. F. Peirce as his sureties thereon, which is approved by the court, and said Kimball is duly sworn in open court to discharge the duties of said receivership according to law and the order of this court.

95a And afterwards, to wit, at the November term of said court, on the 29th day of April, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the receiver, by his counsel, and files his petition No. 1 and petition No. 2 herein, in the words following, to wit:

95*b* Comes now George C. Kimball, receiver herein, and shows to the court that since his appointment as receiver he finds properly certified vouchers of his predecessors, P. B. Shumway and William Foster, and submits herewith a list of each, the indebtedness under the receivership of P. B. Shumway being filed herewith and marked "Exhibit A," showing a gross indebtedness of $7,055.68 on vouchers, and unpaid on the pay-rolls for March 1st to 5th, inclusive, of $628.13; that he finds properly certified vouchers of said Foster as receiver, a list of which is filed herewith and marked "Exhibit B," amounting to $2,691.23, and unpaid upon the pay-rolls for March from 6th to 31st, inclusive, $3,141.65.

95*c* And your receiver would show to the court that he received no money from his predecessors; that there is no money on hand to pay these claims, and no prospect of being able to lay any money aside for that purpose out of the earnings of the road in the near furture; and he also submits herewith a letter from the auditor, Mr. F. D. Raymond, giving an estimate of claims during the receivership not yet audited.

And he would also show to the court that many of these claims are pressing; that all are past due, and many of the owners are suffering and should be promptly paid. He therefore asks the court to consider the propriety of a speedy payment of these claims, and to make an order authorizing him to borrow money on receiver's certificates, upon such terms as the court may direct, and to pay the claims already audited and those that may be hereafter, not exceeding thirty thousand dollars in the aggregate.

95*d* APRIL 25TH, 1885.

Geo. C. Kimball, Esq., receiver.

DEAR SIR: Herewith I hand to you statement of unpaid vouchers

of P. B. Shumway, receiver, amounting to	7,055 68
Statement of amount unpaid on roll of P. B. Shumway, receiver, Mar. 1–5th	628 13
Statement of unpaid vouchers of Wm. Foster, receiver, amounting to	2,691 23
Statement of amount unpaid on roll of Wm. Foster, receiver, Mar. 6–31st	3,141 65
Total	13,516 69

G. C. K.—In addition to the foregoing amounts there are due and payable the following estimated amounts:

To the owners of the Co. G. S. cars for mileage collected from other roads	2,300 00
For the pay-roll, April 1–17th	2,500 00

For the general office:

Salaries, April 1-17th, unpaid	200 00
For fuel, Mar. 6th-Apr. 17th	1,000 00
For mileage of Co. G. S. cars on Co. G. S. R., Oct. 27th-Apr. 17th	1,000 00
	7,000 00

95e Besides the amount that may be allowed P. B. Shumway and Wm. Foster per balance due them for services as receivers.

Respectfully yours,

F. D. RAYMOND, *Auditor.*

P. S.—There are no available assets of any amount with which to meet these obligations. There is less than 500 in the hands of agents, which, with an undetermined amount due from the U. S. P. Dept., estimated at $1,2[illegible] makes about all that is now due the receiver.

Yours, truly, F. D. RAYMOND, *Auditor.*

	Chi. Jon. Bearing Works, brasses	38 40
	Cunningham & Temple, casting for cars	90 81
	P. C. Brooks, office rent	83 35
	Wm. McWill, janitor	16 67
	Fitz Simmons & Connel, bridge timber	321 30
	Fairst Steel Co., car springs	25 63
	H. H. Porter, damage to engine	800 00
	Union Coal Co., coal	9 27
	Henry Smith, bridge timber	21 63
	Do., " "	359 07
	Do., " "	41 10
95f	Jacob Leibo, ties	23 25
	John Lighte, ties	302 51
	T. C. Annabal, legal service	75 00
	D. R. Salmond, expense	3 00
	V. B Jenks, coal	9 30
	Do., "	7 40
	Crera, Adams & Co., coal	33 81
	Do., "	172 66
	Do., "	90 55
	Do., "	166 52
		2,691 23
	Proportion (⅚) of amount unpaid on March pay-roll, 3,768.78	3,141 65
		5,832 88
	John McAuley, on ac. Feb. service and pay-roll ac	4 20
	Fred Lash, "	13 50
	H. Roberts, "	25 00

	J. S. Albaugh, on ac. Feb. service and pay-roll ac	25	10
	R. Jacobs, “	92	39
	F. Metzer & Bro., “	6	25
	Chas. A. Hammond, “	8	00
	John Grogan, “		10
	Thos. Wairen, “	1	33
	Mrs. Barnett, “	1	40
	Jas. Jarrett, “	1	65
	Frank Ryboski, “	1	32
	Paul Brida, “	1	87
	Chas. Thompson, “	3	30
	Albin Johnson, “	3	30
	Tom Dickerson, “	4	95
95*g*	J. M. Butters, on ac. Feb. service and pay-roll ac	4	62
	Geo. Cook, “	11	
	Mentzler & Bro., “	6	25
	W. Mooney, “	5	50
	Fred Lash, “	3	15
	W. J. Young, “	4	00
	John Condon, “	1	66
	Geo. Hastings, “	6	58
	D. B. Colvin, “	8	00
	J. R. Marsh, “	3	60
	Chas. Bengston, “	11	50
	Thos. Tulson, “	5	00
	Industrial Works, turn-table	850	00
	S. A. Baker & Co., oil	59	85
	Fitz Simmons & Connel, bridge timber	434	18
	Thos. R. Lyon, ag't, “	109	13
	Chi., R. I. & Pac. R'y Co., labor, material	42	27
	Do., “ “	89	18
	Pettibone & Millicken, supplies	152	71
	Do., “	689	25
	P. C. Brooks, office rent	16	65
	Wm. McWill, janitor	60	00
	Do., “	3	33
	Chi. Jon. Bearing Works, Pwasses	46	80
	Warren Springer, repair pumps	8	50
	P. C. Hanford Oil Co., oil	36	51
	Orr & Lockett, lock	1	50
	J. M. W. Jones S. & P. Co., stationery & printing		75
	Do., “	17	20
	Hall's Safe & Locke Co., 1 safe	55	00
	Nat. R'y Pub. Co., advertising time-card	7	50
95*h*	Nat. R'y Pub. Co., advertising time-card	5	00
		2,949	83
	A. J. Kirkwood & Co., steam-pump, etc.	431	27
	H. H. Porter, rails	1,629	42
	Do., hire of engine	385	00
	Do., stationery & printing	27	75

Crevar, Adams & Co., supplies	401	72
Do., "	142	47
Do., "	1	60
Peter M. Crane, digging well	100	00
I. B. & W., station expense		61
D. M. Green, hardware, &c.	32	82
D. Salmond, expense	2	85
T. O. Gray, repair b'ld'g	2	12
B. P. Andrews & Co., lumber	56	71
A. J. Kitt, legal notice	2	50
Sims & Fields, carpenter work & material	183	48
H. J. Crawford, legal service	5	00
John Dightle, shines for track	5	00
Henry Smith, bridge timber	45	73
A. Bunyon, expense		90
C. H. Conklin, "		35
Do., "	5	35
Do., "	4	50
E. C. Steele, hardware	1	65
Peacock & Martin, legal expense	1	60
Fountain Warrenkleur, stat'y & printing	10	77
John Painter, expense	1	50
Hess & Harvey, blacksmithing	1	75
Total	6,516	37
Martin Ryerson Co., lumber	539	31
	7,055	68
Proportion (⅙) of amount unpaid on March pay-roll, 3,768.78	628	13
	7,683	81

95i To the honorable judge of said court:

Your petitioner, George C. Kimball, heretofore appointed receiver in this case, would respectfully show to the court that he has made a careful examination of the condition of the property of his trust, and submits to the court the following as his views as to its present condition and its necessities:

He finds, first and general, that said property is in bad physical condition, and requires for its safe and successful operation extensive repairs, and for the purpose of informing the court he would suggest the following matters as demanding the early and speedy action of the court in relation thereto:

He finds, in regard to the bridges and trestles, that the same are
weak, the timbers very much decayed, having already been
95j in use longer than their life, out of repair, and in some in-
stances unsafe for use, and for the purpose of making such
repairs and improvements thereon as to render them safe it will re-
quire an expenditure of about twenty-five thousand dollars,

($25,000.00), the bridge across the Wabash especially needing attention, its foundations giving evidence of serious settlement.

He would also show the court there are many claims for right of way unsettled and unadjusted, and for this purpose there should be provided at once the sum of ten thousand dollars ($10,000.00).

The road is poorly fenced, and in many places there is no fencing whatever; there being throughout its whole line many cattle roaming at large, and for this purpose the sum of fifteen thousand dollars ($15,000.00) should be provided.

95*k* The track of said railway has never been properly ballasted and ditched, and by reason thereof it is in bad condition and the property seriously suffers therefrom, and for the purpose of ditching and ballasting the track with gravel, which is found in large and convenient quantities along the line of said road, the sum of twenty thousand dollars ($20,000.60) should be provided.

The petitioner would show that there is only one turn-table on the line of said road, and that is situated a- Yeddo, there being no place between Yeddo and Fair Oaks where an engine may be turned, and it is of the utmost importance that a turn-table be provided at once at Attica; that for that purpose it is necessary to purchase a lot, and said receiver has looked about and ascertained that a suitable lot can be purchased at that
95*l* place for about the sum of six hundred dollars ($600.00), with some buildings thereon that can be utilized for a repair shop; that there is no place at Attica where an engine can be run under shelter, and that an engine-house should there be provided, and would suggest that for the construction of said engine-house and the purchase of a turn-table and their erection at that point, and the finishing of one already started at Yeddo, the sum of two thousand dollars ($2,000.00) should be provided. The ties in the track have never been removed and many of them are now completely decayed or broken, thereby making the operation of the road less safe and the injury to the rolling-stock and rails materially increased, and that the sum of five thousand dollars
95*m* ($5,000.00) be allowed for the purchase of ties. The road is especially deficient in the matter of side tracks and there are no rails on hand to be used therefor; much of the iron south of Attica having been in the track for many years is badly worn and should be replaced with new rails and the old rails used in lengthening out the present and putting in where necessary new side tracks, and for the purchase of new rails the sum of fifteen thousand dollars ($15,000.00) is necessary; and for the purpose of these various repairs the petitioner believes to be not only economical, but that it is necessary to purchase a new steam shovel and plow, as the use of these will save their cost in what would otherwise be used in payment of labor; also a new pile driver, which is necessary to drive the piles required in repairing the bridges, and is always a necessary tool for emergencies, which will probably
95*n* cost in the neighborhood of twelve thousand dollars ($12,000.00).

The railroad company has never had any repair shops and little attention has been given to the repairing of the rolling-stock, so that the cars generally need overhauling and repairing, and for this purpose I estimate that it would cost about six thousand dollars ($6,000.00).

At some of the stations there are no depots, at others the depots are small, and at some the depots need repairing, and for the general improvement of depot facilities there should be appropriated about five thousand dollars ($5,000.00).

And for the purchase of wheels, axles, and light machinery and supplies, the sum of five thousand dollars ($5,000.00), making a total expenditure of one hundred and twenty thousand and six hundred dollars ($120,600.00.) The expenditure of this —
95o of money for the purposes indicated are, as your receiver believes, necessary not only for the present safe and economical operation of the road, but would be desirable for its permanent improvement, and he therefore asks the court for a consideration of these necessities of the road and for an order authorizing him to borrow this said sum of money for said expenditures, upon such terms as the court may direct, and to issue therefor receiver's certificates for the purpose of carrying out the improvements in accordance with the foregoing suggestions.

Your receiver would further suggest that the present is a peculiarly proper and advantageous time to purchase the material, supplies, and equipments above named, as the prices thereof are now very low—much lower than they are likely to be in the future.

GEORGE C. KIMBALL, *Receiver.*

95p And afterwards, to wit, at the May term of said court, on the 29th day of April, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

95q This day comes on to be heard the petition of the receiver, No. 1, in regard to issuing receiver's certificates and borrowing moneys thereon; and it appearing to the court from the accounts of said receiver and his predecessors, Philip B. Shumway and William Foster, filed with his petition, that there are considerable sums of money due for labor, supplies, materials, and other operating expenses of the said railway since the appointment of said Shumway as receiver by the Jasper circuit court of the State of Indiana, and the said receiver having no funds with which to pay said indebtedness, and it appearing to the satisfaction of the court that said indebtedness ought to be paid:

Now, therefore, in view of the above points and in pursuance of the prayer of the petition this day filed before me by the said
95r receiver, George C. Kimball, heretofore appointed by the court as receiver, to control, manage, and operate the Chicago and Great Southern Railway Company, the said receiver is hereby authorized and directed to borrow, on the terms and rate of interest set out in the following form and debenture, not exceeding thirty thousand dollars, to be used in paying the indebtedness of the re-

ceiverships herein, and to issue to the person or persons advancing such sum, or any *or* parts thereof, certificates, signed by him, expressing the amounts so advanced and the terms upon which the same may be advanced, which certificates may be in form as follows, to wit:

No. ——. $——.

The Chicago and Great Southern Railway Company, George C. Kimball, receiver.

OFFICE OF THE RECEIVER,
ATTICA, INDIANA, —— —, 1885.

95*s* One year after date, unless sooner paid, I, George C. Kimball, as receiver of the Chicago and Great Southern Railway Company, under and by virtue of authority vested in me by the circuit court of the United States for the district of Indiana, promise to pay ——, or order, —— dollars, with interest at the rate of six per cent. per annum, this obligation to operate with such other debentures as may be hereafter ordered by this court as a first lien on all the railroad of said company lying between Fair Oaks and Yeddo, in the State of Indiana, and its earnings, income, and profits, after deducting operating expenses, costs of needed repairs, and other expenses of the receivership, this obligation being one of a series authorized to be issued by said order, not exceeding thirty thousand dollars.

—— ——, *Receiver.*

95*t* The indebtedness evidenced by said certificates is hereby made a first and best lien on all of said railroad lying between Fair Oaks and Yeddo, in the State of Indiana, superior to all other claims whatsoever.

4, 29th, 1885.

W. A. W.

96 And afterwards, to wit, at the May term of said court, on the 6th day of May, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings were had in the above-entitled cause, to wit:

Come now the parties by counsel and file herein the following stipulation, to wit:

It is hereby agreed by and between the parties that the Cleveland Rolling Mill Company, a citizen of Cleveland, State of Ohio; Wirt D. Walker, a citizen of Chicago, Illinois; H. B. Scutt & Company, Oliver Bros. & Phillips (Limited), citizens of Pittsburgh, State of Pa., and Charles Fitzsimmons and Charles J. Connell, citizens of Chicago, Illinois, may be made parties defendant in the above-entitled cause; and upon their being made parties Col. John S. Cooper and Straight, Wiley & Carter agree to enter their formal appearance as attorneys for all of said parties, waiving the issuing and service of process, and will answer for all of said parties when so made defendants under the rule and order of the court.

JOHN S. COOPER AND
STRAIGHT, WILEY & CARTER,
Attorneys for Cleveland Rolling Mill Co. et al.
McDONALD, BUTLER & MASON,
Sol's for Porter.

And it is thereupon ordered by the court that the parties mentioned in the above stipulation be, and they are hereby, made parties defendant in the above-entitled cause, and are ruled to answer herein by the 15th inst.

97 And afterwards, to wit, at the May term of said court, on the 28th day of May, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings were had in the above-entitled cause, to wit:

Comes now the defendant, The Chicago & Great Southern Railway Company, by Henry A. Gardner, its solicitor, and files its answer herein in the words following, to wit:

98 The separate answer of the Chicago & Great Southern Railway Company, one of the defendants, to the bill of complaint of Henry H. Porter, complainant.

This defendant, now and at all times hereafter, saving and reserving to itself all benefit and advantage of exception and otherwise that can or may be had or taken to the many errors, uncertainties, and other imperfections in said bill of complaint contained, for answer thereto or unto so much and such parts thereof as it is advised it is necessary or material for *for* it to answer, answering, says:

That it admits that Henry H. Porter is a citizen of the State of Illinois and a resident of Cook county, in said State, and that all the defendants to said bill of complaint are citizens of the State of Indiana.

This defendant, further answering, says that it admits that on the first day of November, 1881, it was the owner of and engaged in constructing and operating a line of railroad from Fair Oaks, in
Indiana, to the city of Brazil, in Clay county, Indiana, and
99 that on said first day of November, 1881, it duly executed
and delivered to John C. New, of Indianapolis, Indiana, as trustee, a trust deed or mortgage bearing date the said first day of November, A. D. 1881, by which it conveyed to said trustee its line of railroad, constructed and in course of construction, being the line of railroad described, together with all and singular its right of way, road-bed, tracks, depot, grounds, stations, buildings, and all its property constituting and forming a part of said line of railroad; also its engines, cars, and machinery, as by reference to said Exhibit A of complainant's bill will more fully and at large appear, to secure an issue of two million dollars of its bonds, also described in said Exhibit A of complainant's bill, said bonds being payable to the order of John C. New and certified to by him as trustee; that by

said trust deed the said bonds became and have since continued to be a first and paramount lien on all the property described in said trust deed.

And this defendant, further answering, says that it admits
100 that in the month of March, 1883, it acquired by consolida-
tion the railroad property, franchises, rights of way, equipments, &c., of the Chicago & Block Coal Railroad Company, a line of railroad about twenty miles in length, extending from Attica to Yeddo, in Fountain county, and that thereafter, on April 9th, 1883, this defendant, to further secure said bonds, executed and delivered to said John C. New, as trustee, a supplemental trust deed, of which Exhibit B of complainant's bill is a copy, conveying all of said property it acquired from said Chicago & Block Coal Railroad Company, to be held by him as further security for the payment of said two million dollars of bonds, as above mentioned, which said trust deed became thereby, and has ever since continued to be, a first lien upon said property.

This defendant, further answering, says that it admits that after the execution and delivery of said trust deeds to said John C. New,
as trustee, it issued and negotiated for a good and valuable
101 consideration $1,200,000 of said bonds, and the said bonds
were delivered to the purchaser thereof.

This defendant, further answering, says that it admits that the said Henry H. Porter is the holder and owner of all of said 1,200 bonds and the coupons belonging thereto, and that the coupons maturing on July 1st, 1882, January 1st, 1883, July 1st, 1883, January 1st, 1884, July 1st, 1884, and January 1st, 1885, are all past due and unpaid, and that this defendant has no money or property with which to pay said past-due coupons.

This defendant, further answering, says that it admits that said Henry H. Porter, being the owner and holder of said bonds and coupons, did in January, 1885, demand, in writing, of said John C. New, trustee, that he should proceed to execute the trust of said two trust deeds so executed and delivered to him as aforesaid, substantially as set forth in complainant's bill of complaint, and that said New
did commence suit to foreclose said trust deeds and sell said
102 property, but subsequently dismissed his bill and refused ab-
solutely to protect the rights of said Porter as the holder of said bonds and coupons, or to have said security in any way applied to the payment thereof, and has absolutely refused to take any steps toward the protection of said Porter.

And this defendant, further answering, says that the property covered by said mortgages is in an unfinished condition, the railroad unballasted and in its present condition incapable of paying the expense of operating the same, and that it is inadequate security to pay the amount of said $1,200,000 of bonds, and that this defendant is insolvent and has no other property or assets of any kind other than the property covered by said mortgages.

This defendant, further answering, says that it admits that it is provided in said trust deed first mentioned that if the coupons or interest warrants upon said bonds shall be six months in arrears it

shall be lawful for said John C. New, trustee, upon written
103 request from the holders of a majority in amount of said bonds
at that time outstanding, and upon receiving satisfactory indemnity, to cause all and singular the premises, railway appurtenances, equipments, and franchises conveyed by said trust deed to be sold as an entirety at public auction to the highest and best bidder at the city of Chicago, Illinois, upon giving sixty days' notice of the time, place, and terms of sale by advertisement, as set forth in said Exhibit A, and that upon such sale said trustee should make, execute, acknowledge, and deliver a good and sufficient deed, conveying all said railroad property and franchises so sold to the purchaser or purchasers thereof.

This defendant, further answering, says that it admits that the said trustee had also the right under said trust deed, after six months' default in the payment of interest or principal of the bonds secured
by said trust deed, to institute legal proceedings in any court
104 of competent jurisdiction to foreclose said trust deeds and to
procure judicial sale of the property thereby conveyed.

This defendant, further answering, says that it admits the default in interest of said bonds as aforesaid, and admits that the said trustee, John C. New, has refused to take any steps to protect the rights and interests of said complainant or to execute the authority and right given him under said trust deeds, and that a right of action has accrued to the complainant, Henry H. Porter, as the holder and owner of the said $1,200,000 of bonds above mentioned, secured by said trust deeds for the enforcement of the trusts mentioned in the said trust deeds, and to cause the said property covered by said trust deeds to be sold and the proceeds thereof applied in payment of this defendant's indebtedness to him.

This defendant, further answering, says that only twelve hundred of said bonds have been issued or are outstanding against it, and
that its entire indebtedness secured by said trust deeds is the
105 amount due to said Porter, viz, twelve hundred thousand
dollars and the interest thereon as aforesaid to the amount of over $220,000.

This defendant, further answering, says that it admits that said Porter is entitled to a decree of foreclosure herein, and hereby assents to and authorizes this court to enter a decree herein in favor of said Porter for the amount so as aforesaid due to him and for a sale of the property mentioned and described in said two trust deeds, and to pay him the said amount.

This defendant, further answering, says that there is no other matter or thing in said complainant's bill of complaint contained material or necessary for it to make answer unto and not herein and hereby well and sufficiently answered; all of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct.

THE CHICAGO & GREAT SOUTHERN
RAILWAY,
By EDWARD F. LAWRENCE, *Pres't.*

106 STATE OF ILLINOIS, } *ss:*
County of Cook, }

Edward F. Lawrence, being duly sworn, on oath says that he has read the above answer subscribed by the Chicago & Great Southern Railroad Company and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

EDWARD F. LAWRENCE.

Subscribed and sworn to before me this 27th day of May, A. D. 1885.

[NOTARIAL SEAL.] C. B. STANGE.

107 And afterwards, to wit, at the May term of said court, on the 15th day of June, 1885, before the Honorable Walter Q. Gresham and the Honorable William A. Woods, judges as aforesaid, the following further proceedings were had in the above-entitled cause, to wit:

Come now the defendants, The Cleveland Rolling Mill Company, Wirt D. Walker and others, by Mr. Wiley and Mr. Cooper, their solicitors, and, upon their motion, leave is hereby granted them to withdraw and amend their [joint] and several answer filed herein on the 19th day of May, 1885.

And afterwards, to wit, at the May term of said court, on the 24th day of June, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings were had in the above-entitled cause, to wit:

Come now the Cleveland Rolling Mill Company and others, by counsel, and refile their joint and several answer as amended in the words following, to wit:

108 The joint and several answer of the Cleveland Rolling Mill Company, a corporation organized and existing under the laws of the State of Ohio; Wirt D. Walker, of the State of Illinois; Henry W. Oliver. Jr., David B. Oliver, James B. Oliver, John Phillips, and James Smith, copartners doing business under the firm name and style of Oliver Bros. & Phillips, of the State of Pennsylvania; H. B. Scutt & Co. (Limited), a corporation organized and existing under the laws of the State of Pennsylvania, and Charles Fitzsimmons and Charles J. Connell, partners, doing business under the firm name and style of Fitzsimmons & Connell, defendants, to the bill of complaint of Henry H. Porter, complainant.

These defendants, now and at all times hereafter saving and reserving to themselves whatever of benefit or advantage that can or may be had or taken to the many errors, uncertainties, or imperfections in the said bill of complaint, for answer thereunto, or to so

much thereof as these defendants are advised it is material for them
to make answer unto, answering, say: They admit that the said
Henry H. Porter, complainant, has possession and is the holder of
the bonds of said railway company mentioned in said bill of
109 complaint, and also holds the coupons representing the in-
terest upon said bonds in his said bill of complaint men-
tioned and set forth.

These defendants, further answering, say as follows, viz: This defendant, The Cleveland Rolling Mill Company, says for itself that
under and by virtue of a contract and agreement with the said Chicago & Great Southern Railway Company during the years 1881
and 1882 it furnished for the said railway company a large amount
of iron rails for the building of said railroad, the last payment for
which was and became due and owing this defendant, under various agreements with said railway company, after the first of July,
1882, and for the amount of which indebtedness due and owing this
defendant the said railway company was, on the 11th day of March,
A. D. 1885, indebted to this defendant in the sum of $37,724.36, and
for which amount this defendant recovered judgement against said
railway company on the day and year last aforesaid in a certain suit
then pending in the circuit court of Newton county, in the State of
Indiana, wherein this defendant was plaintiff and said rail-
110 way company was defendant, and of which suit the said cir-
cuit court of Newton county had jurisdiction, as well as of the
said defendant railway company, and which said judgement was and
is a lien on the railway of said defendant railway company as defendant in said bill of complaint.

And the said defendant, Wirt D. Walker, says that on the 18th day of November, 1884, in this honorable court, he recovered judgement against said railway company, defendant, for material furnished after the first of July, 1882, for the building and equipment of said railroad of said defendant railway company, which judgement was for the sum of $2,835.53, together with the costs of said suit.

And the said defendants, Henry W. Oliver, Jr., David B. Oliver,
James B. Oliver, John Phillips, and James Smith, copartners as aforesaid under the firm name and style of Oliver Bros. & Phillips, for
answer to said bill of complaint, answering, say: That on the 20th
day of February, 1885, said last-mentioned defendants recovered a
judgement against said railway company for $710.24 in the circuit
court of Benton county, Indiana, and their costs of such suit,
111 and that of the said defendant railway company the said last-
mentioned circuit court had jurisdiction; that said judge-
ment was recovered for materials furnished to said railway company
after the month of July, A. D. 1882, which materials were used in
the construction of said railroad, and which said judgement was and
is a lien on said railway property.

And the said defendant, H. B. Scutt & Co. (Limited), for answer to said bill of complaint, answering, says that subsequent to the month of July, 1882, the said railway company, defendant, became indebted to this defendant in a large sum of money for the materials furnished and used in the building of said railroad; that on the 20th day of February, 1885, this defendant recovered a judgement against said railway company in a suit then and there pending in the Benton county circuit court of Indiana for the sum of $1,148.53 and costs, of which suit and of the said defendant the said Benton county circuit court then and there had jurisdiction, and which said judgement was and is a lien upon said railway property.

112 And these defendants, Charles Fitzsimmons and Charles J. Connell, as partners under the firm name of Fitzsimmons & Connell, for answer to said bill of complaint, say that subsequent to the month of July, 1882, they furnished material in the construction of the railway of said defendant railway company to a large amount, and that on the second day of April, 1885, in the circuit court of Jasper county, Indiana, in a suit in which these defendants were plaintiffs and said railway company was defendant, these defendants recovered a judgement against said railway company for the sum of $2,432.36 and costs *against railway company*, which said judgement was and is a lien upon said railway property.

And all the defendants in this answer, further answering, say that each and every of the judgements recovered by them respectively against said railway company are still valid and subsisting judgements against said railway company, and that the said judgements have not in any way been paid or satisfied, and that the same are now in full force and effect as liens against the property of said railway *property*.

113 And these defendants, further answering, say that the materials furnished for the building of said railway by each of them respectively was furnished, and the indebtedness therefor became due to them, and each of them, respectively, after the default in the interest on the bonds of said railway company, as set forth and complained of by said complainant in his bill of complaint.

And that after the first default in the interest complained of by said complainant in the bill of complaint, the said material was used in the construction of the said railway by the said railway company, and for the benefit and advantage of the said railway property.

And these defendants are advised by their counsel, believe and charge the same to be true, that for the amounts respectively of their said claims against said railway company they are entitled to be paid out of the proceeds of the sale of said railway property and out of the income thereof the amount due to them respectively for such material so furnished, with legal interest thereon.

These defendants, further answering, say that the said bonds and interest coupons mentioned and referred to in said bill of complaint were executed and delivered under the following circumstances, viz:

114 That on or about the 18th day of March, 1882, one Henry Crawford having become the owner of a majority of the stock of said railway company, and having procured to be elected as members of the board of directors of said railway company clerks and

employees of him, the said Crawford, persons who were under his control and subject to do his bidding, prepared a contract between him, the said Crawford, and the said railway company, under and by virtue of which the said bonds, together with the capital stock of said railway, company, were to be issued and delivered to him, the said Crawford; that said contract provided that the said Crawford should procure the right of way for — grade, bridge, construct, and equip the northern division of said railway company extending from a junction with the Louisville, New Albany and Chicago railway, about ten miles northwest of Rensselaer, or such point of junction as might be fixed upon by the parties, and thence southwardly through the counties of Jasper, Newton, Benton, Warren, Fountain, Park and Clay to Brazil, all in the State of Indiana, and that the same
should be done in accordance with the specifications con-
115 tained in said contract; that the said Crawford should also
erect the necessary depots, water-tanks, tool-houses, turntables, and stock-pens, and put in proper sidings, and should purchase, pay for, and place upon said road a sufficient number of engines and passenger and freight cars to enable it to do the business that might be offered to it; and also should erect alongside of said road a line of telegraph and have the same properly wired, and that the same should be entirely completed by June 1st, A. D. 1883, and that in consideration thereof he, the said Crawford, should receive from the said railway company two million dollars of the full-paid non-assessable shares of the capital stock of said railway company, and also two million dollars of its first-mortgage six per cent. gold bonds, secured by a mortgage or deed of trust dated November 1st, 1882, executed to John C. New as trustee, and that he, the said Crawford, should also receive from said railway company two million dollars of its income bonds, bearing interest not to exceed seven per cent. per annum, payable annually out of the net earnings
of the said northern division, and secured by a trust deed,
116 with proper covenants, to such trustee, and that the said first
mortgage and income bonds and capital stock should be paid to the said Crawford as the work of construction from time to time should progress; and in and by its said contract certain other provisions and agreements were made by and between said railway company and said Crawford, which will more particularly and fully appear upon an examination of said contract a copy of which is hereunto annexed and made a part hereof, marked "Exhibit A."

These defendants, further answering, say that the said contract was made, or pretended to be made, by and between the said Crawford and the said railway company at a time when he, the said Crawford, had full and entire control over the said railway company, whose board of directors were mere clerks in the employ of the said Crawford, in his pay, under his direction, and entirely subject to do his bidding. And these defendants charge that the said Crawford was at that time himself a director and officer of said railway company. And these defendants are advised by their counsel, believe and charge the same to be true, that the said contract, when

117 executed, was fraudulent and void; that the same was, in effect, a contract or pretended contract made by the said Crawford to and with himself, he having at the time the contract was made the full control and direction of the said railroad company and its board of directors.

These defendants, further answering, say that during all the time that the said railroad was being constructed the said Henry Crawford, the contractor in the building of said road, was the sole owner of a majority of the stock of said railroad company; that all of the said bonds and interest coupons of the said complainants were delivered to the said Crawford as the said railroad was being constructed, at his instance and dictation not only as contractor, but as controlling the organization of said railroad company, and that each and every of the twelve hundred bonds with the interest coupons belonging thereto, sought to be foreclosed in this suit, were delivered to the said Crawford, or pretended to be delivered to him, by the said railway company, exactly when and where he, the said Crawford, directed the said railroad company through its board of
118 directors and officers to deliver the same; and that said contract and the delivery of the bonds thereunder were in effect and substance the case of a contract executed by the said Crawford to and with himself, and the consideration was paid to him by said railroad company acting under his sole and exclusive dictation and control as aforesaid; that the said contract was and is, in a court of equity, fraudulent and void, and that the delivery of the said bonds sought to be foreclosed in this suit, and each delivery thereof was a fraudulent delivery of bonds by the said railroad company, or in the name of the said railroad company to the said Crawford at his dictation and instance.

These defendants, further answering, say that the said bonds thus delivered to the said Crawford under and by virtue of the said construction contract were by him hypothecated with the firm of Drexel, Morgan & Co., a copartnership doing a banking business in the city and State of New York, and that the same were by the said Porter, complainant, purchased from said Drexel, Morgan & Co., under an agreement between said Porter and the said Drexel, Morgan & Co., the said Crawford, and the First National Bank of Chicago;
119 that before the said Drexel, Morgan & Co. received said bonds on hypothecation or pledge they investigated the said railroad and the contract between the said Crawford and the said raidroad company and knew all about the fraudulent character of the said contract—that is to say, the said Drexel, Morgan & Co. knew that the said Crawford had entire control and direction of the said board of directors of the said railroad company at the time the said contract was entered into and at the time the said bonds were delivered to him, the said Crawford, and the said Drexel, Morgan & Co. not only took the said bonds in hypothecation, but also took and received an assignment of the said construction contract as collateral security for the payment of the money borrowed of the said Drexel, Morgan & Co. by the said Crawford with full knowledge of

the fraudulent character of said contract and of the delivery of said bonds.

These defendants, further answering, say that said Porter, prior to acquiring the bonds and interest coupons for which he seeks foreclosure in this suit, inquired into and knew the facts and circumstances hereinabove set forth, namely, that the said Henry
120 Crawford, at the time the said construction contract was pretended to be entered into between him and the said railroad company, had the full and entire control of the said railroad company; that he owned the majority of the stock thereof; that the directors and officers thereof were clerks and employees of him, the said Crawford, and subject to do his bidding, and that at the time the said bonds were delivered to the said Crawford, together with the interest coupons thereunto belonging, during the progress of the construction of said railroad, he, the said Crawford, had like control and domination over the officers and directors of the said railroad company and was the owner and holder of a majority of the stock thereof.

These defendants, further answering, say that they are advised by their counsel, believe, and charge the same to be true, that the said construction contract of the said Henry Crawford and the delivery of the bonds to him in accordance therewith, under the facts and circumstances hereinbefore set forth, were, and the same are, fraudulent and void as against these defendants, judgement creditors of said railroad company, and that the said mortgage and bonds
121 secured thereby, together with interest coupons representing the interest due on said bonds, should, as against these defendants, be considered and treated by this court as a court of equity, subordinate to the rightful liens and claims of these defendants in the premises.

These defendants, further answering, say that they are informed, believe, and so charge the facts to be, that before the said Henry H. Porter, the complainant, consummated the purchase of the said bonds and interest coupons sought to be foreclosed in this suit, he well knew the rightful claims of these defendants in the premises, together with claims other than those of these defendants, and that as between him and the said Henry Crawford it was provided in a contract in writing that the sum of one hundred thousand dollars or more should be retained by the said Porter and set apart with which to pay all liens against the said railroad property, which should be established paramount to the lien of the said mortgage, to the said John C. New, trustee, and that the said Porter, when he purchased the said bonds and interest coupons, and when he
122 made the said agreement for the purchase thereof, well knew the rightful claims of these defendants in the premises and sought to protect his mortgage security by making provision for the payment of these defendants' claims and other claims that might be established against said railroad property as prior to the said mortgage.

These defendants, further answering, say that the said Porter did retain and still has retained and now has the sum of one hundred thousand dollars or more in his hands as a trust fund for the purpose of paying these defendants in case they shall establish a lien ahead of said mortgage, and that the same was a part of the consideration which the said Porter agreed to pay for the said bonds bought by him from the said Drexel, Morgan & Co. in accordance with the agreement between him, the said Porter, the said First National Bank of Chicago, and said Crawford and said Drexel, Morgan & Co.

These defendants, further answering, say that they are informed, believe, and charge the facts to be, that by virtue of the agreement between the said Drexel, Morgan & Co., the said First National Bank of Chicago, said Henry Crawford, and said Henry H Porter that of the said sum of one hundred thousand dollars or
123 more which the said Crawford shall not be required to pay
for claims established as prior liens to the said mortgage the said Porter is obligated and bound to pay any such surplus to the said Henry Crawford.

And these defendants, further answering, say that they are informed, believe, and so charge the facts to be, that when the said Henry H. Porter was negotiating for the purchase of the said bonds and interest coupons sought to be foreclosed in this suit he knew and was advised by the creditors of said railway company that there was a large sum of money due and owing to them for work and labor done and supplies and material furnished in the construction of said railroad and that his dealings in the premises were with the said Henry Crawford, and in order to protect himself, the said Porter, and to protect the mortgage security the said sum of one hundred thousand dollars or more was set apart as a trust fund out of which to pay the rightful claims of these defendants and other creditors of this defendant railroad company who had furnished supplies and materials or done labor in the construction of
124 said road in case, after litigation, the said claims could not
be defeated as liens prior to the lien of the said mortgage securing the bonds held by the said Porter, and that the effort and attempt now made by the said Porter is being made and attempted in the interest of the said Henry Crawford to save as much for him, the said Crawford, out of the said hundred thousand dollars as can be made and saved in the sole and exclusive interest of the said Henry Crawford, the contractor of said railroad company, under the said fraudulent contract hereinabove mentioned and set forth, and a copy of which is attached to this answer, as aforesaid.

And as to all other matters and things in the said bill of complaint contained not herein specifically answered these defendants deny the allegations contained in said bill of complaint and require from the said complainant specific and certain proof thereof.

And these defendants, having answered the said bill of complaint as fully and particularly as they are advised it is material or necessary for them to answer, beg to be hence dismissed, with their reasonable costs in this behalf most — sustained.

CLEVELAND ROLLING MILL CO.,
WIRT D. WALKER,
OLIVER BROS. & PHILLIPS,
H. B. SCOTT & CO.,
FITZSIMMONS & CONNELL,
By JOHN S. COOPER & STRAIGHT,
WILLY & CARTER,
Their Solicitors.
JOHN S. COOPER, *Of Counsel.*
HARRIS & CALKINS, *Of Counsel.*

125 EXHIBIT A.

This agreement, made this 18th day of March, A. D. 1882, between Henry Crawford, of Chicago, Illinois, the party of the first part, and the "Chicago & Great Southern Railway Company," a corporation organized under the laws of the State of Indiana, the party of the second part, witnesseth:

That for and in consideration of the payments and covenants of the party of the second part, as hereinafter set forth, the party of the first part hereby agrees to procure the right of way for and fully grade, bridge, construct, and equip the northern division of the railway of the party of the second part, extending from a junction with the Louisville, New Albany & Chicago railway about ten miles northwest of Rensselaer, or such point of junction as may be fixed on by the parties, and thence southwardly through the counties of Jasper, Newton, Benton, Warren, Fountain, Parke, and Clay to Brazil, Indiana, in accordance with the terms and specifications hereinafter set out—that is to say, the said party of the first part agrees—

126 First. To procure a complete right of way of sufficient width over and upon the said entire route for the line of railway, and also sufficient and suitable grounds for sidings, depots, switch-yards, turn-tables, water-tanks, and other appendages ordinarily needed by a railway for its proper operation.

Second. That he will also in a proper and workmanlike manner grade and bridge the said railroad, lay down thereupon two thousand and six hundred and forty ties to the mile, either of oak, cedar, hemlock, or other proper wood, and lay down thereupon either iron or steel rails, to be not less than fifty-two pounds to the lineal yard, and securely fasten the same by fish-plates, four bolts to each joint, and thoroughly spike down the rails over the entire length of line, and will also procure and put down all of the necessary crossing-frogs, turnouts, switch-stands, and appurtenances necessary to complete the line ready for business; all such graduations, bridgings, track-laying, ties, and rails to be out of good quality and construction, and the whole work to be done in a workmanlike and proper manner, and the road to be surfaced with a smooth and proper surface, and all necessary and proper road crossings, bridges, and cattle guards to be placed along the line.

127 Third. The party of the first part will also erect all such necessary depots, water-tanks, tool-houses, turn-tables, and stock-pens as may be necessary and proper for the handling of such business as may be offered to the said line on its completion, and he will also put in proper sidings at convenient points so as to enable the business of the line to be handled with economy and despatch; said party of the first — agrees also to purchase, pay for, and place upon the road a sufficient amount of engines and passenger and freight cars as to enable it to handle with reasonable promptness all the business that may be offered to it at such time as it is completed and opened for business, being such an amount of equipment as is usually placed upon roads of similar character upon completion.

Fourth. He will also erect upon the right of way, alongside of the road, a line of telegraph and procure the same to be properly wired and have an amount of instruments and batteries placed at proper stations on the road so as to afford proper facilities for the handling of trains and traffic over the road.

128 The party of the first part agrees that the said work herein agreed to be done shall be begun with promptness and prosecuted with such diligence that the same shall be entirely completed by June 1st, A. D. 1882; provided, however, if, by reason of injunctions or bad weather, floods, or unforeseen circumstances or the failure of contractors, the work of construction shall be delayed or temporarily prevented, then the party of the first part shall have the above contract time of completion sufficiently extended to meet and equalize any such unexpected delays.

In consideration of the premises above on the part of the party of the first part the said party of the second part hereby agrees as compensation and payment, and as an agreed price for such grading, bridging, labor, materials, right of way, and equipment as aforesaid to pay the said party of the first part—

First. All donations of stock, right of way, land, labor, material, or money that have been heretofore or may hereafter be at any time acquired by the party of the second part for its use or benefit.

Second. Also, to pay and deliver to the party of the first
129 part two million dollars of the full-paid non-assessable shares of the capital stock of the party of the second part.

Third. Also, to pay and deliver to the party of the first part the issue of two million dollars of its first-mortgage six per cent. gold bonds which are secured by the mortgage or trust deed dated November 1st, 1882, and executed to John C. New.

Fourth. Also, to pay and deliver to the party of the first part two million dollars of the income bonds of the party of the second part, which bonds shall bear not to exceed seven per cent. interest, payable annually, and which interest shall be payable exclusively out of the net earnings of said northern division after payment of the interest on its first-mortgage bonds, operating expenses, taxes, and proper renewals and repairs, but said interest shall be non-cumulative; such bonds to be secured by a trust deed, with proper covenants, to such trustees as may be agreed on between the parties.

It is further agreed that the payment of such stock, first-mortgage, and income bonds are to be made to the party of the first part in proportion as the work of construction from time to time progresses,
and the said party of the first part shall have the absolute
130 right to demand and receive the full amount of fifteen thou-
sand dollars in stock and the same amount of first-mortgage bonds, and the same amount in income bonds for each and every mile of main track as fast as laid, and for all equipment as fast as placed on the road, the party of the first part shall have the right to demand and receive the first-mortgage bonds aforesaid at the rate of sixty-six cents on the dollar, to equal the full appraised value of such equipment, as fixed by the engineer of the party of the second part, and also the same amount of income bonds and stock.

On the completion of the road or termination of this contract the party of first part shall have the right to demand and receive any balance of stock and bonds that may remain at such time still undelivered to them out of total contract price. It is further agreed that the said party of the first part is to have the full possession and control of each and every part of said line of railroad and equipment and property and receive and appropriate as his own all and singular the income and revenues of said railroad until the entire and full completion of the road or the termination of this contract, but such operation shall be at the risk & cost of the party of the first part.

131 It is further agreed that the party of the second part shall
from time to time on demand, and for the accommodation of the party of the first part, execute and deliver to the party of the first part its promissory notes or acceptances to enable him to negotiate loans for the work of construction, or to evidence the purchase of material, right of way, equipment, or to pay for labor to be used in the work, but said notes or acceptances are always on maturity or renewal to be fully paid by the party of the first part and the railway company forever protected and saved harmless therefrom.

It is further agreed that if said company, before the completion of said northern division, decides to extend its line southerly from Brazil, that in that case said party of the first part shall have the right to construct and equip such extension, and shall receive the same amount and character of payment and compensation as is hereinbefore set out for each mile, viz., twenty thousand dollars in full-paid stock for each mile of main track, twenty thousand dollars per
mile in first mortgage six per cent. bonds, and twenty thousand
132 dollars per mile in income bonds and all the donations that
the said party of the second part may procure upon the said southern division.

It is further agreed that if the said party of the first part, at his expense, procures the consolidation of the party of the first part with the Chicago and Block Coal Railroad Company, so as to thereby acquire among other property the completed railway of the said named corporation extending southerly from Attica, that thereupon the party of the first part shall be allowed and paid upon the main line mileage of said constructed road so acquired the same amount of stock and first-mortgage and income bonds and donations as though the said railroad so acquired had been actually constructed by the party of the first part under the terms of this contract.

If at any time during the progress of the work the party of the first part shall be unable to make the first-mortgage bonds thereby agreed to be paid as part compensation at such price as will net him seventy-five cents on the dollar, then the party of the first part shall be entitled at his option to stop all further work under this agreement and declare the same to be terminated, and demand
133 and receive from the party of the second part full payment and settlement in stock, bonds, and donations for all work and labor done and material, equipment, or right of way furnished up to such notice and termination of this contract, such payments to be for the full contract price per mile.

In witness whereof the party of the first part hath hereto set his hand and seal and the party of the second part has hereto set the signature of its president and affixed its corporate seal, attested by its secretary, the day and year first above stated.

(Signed) HENRY CRAWFORD. [SEAL.]
CHICAGO & GREAT SOUTHERN
RAILWAY COMPANY,
By WM. A. STARIN, *President.*

Attest: H. CRAWFORD, JR., *Secretary.*

STATE OF ILLINOIS, } *ss:*
County of Cook, }

William G. McMillan, being first duly sworn, deposes and says he is the agent and attorney for the Cleveland Rolling Mill Company, one of the defendants mentioned in the foregoing answer; that he has read the answer hereto set forth and knows the contents thereof, and that as to the facts therein stated he knows the same to be true, and as to the matters and things set forth as being on information and belief he believes them to be true.

WILLIAM G. McMILLAN.

Subscribed and sworn to before me this 22nd day of June, A. D. 1885.

[SEAL.] WILLIAM GARNETT, JR.,
Notary Public.

134 And afterwards, to wit, at the May term of said court, on the 4th day of August, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now James McCalment, Volney Q. Irwin, Smith Bridge Co., James Carnahan, John Hack, James E. Hale, Coburn, Jones & Co., and Philip Martin, by Straight, Wiley & Carter, John S. Cooper, and

Harris & Calkins, their solicitors, and amend their cross-bill and refile the same in the words following, to wit:

135 The joint and several cross-bill of and on behalf of the creditors and lien-holders of the Chicago & Great Southern Railway Company, humbly complaining, showeth unto your honors — James McCalmet, Volney Q. Irwin, James Carnahan; John Hack and James E. Hale, persons doing business under the firm name of Hack & Hale; The Cleveland Rolling Mill Company; Henry Coburn, —— Smith, —— Jones, a firm doing business under the name of Coburn, Jones & Co., plaintiffs, and Philip Martin, assignee of labor claims, who bring this cross-bill on behalf of themselves and all other creditors, lien-holders, tax-payers of and stockholders in the said Chicago & Great Southern Railway Company against said railway company and Henry A. Porter — John C. New, trustee, and say:

That heretofore, to wit, on the 8th day of March, 1880, a railroad company was incorporated under the laws of the State of Indiana, under the name of the Indiana & Chicago Railroad Company, for the purpose of constructing and operating a railroad company in said State through the counties of Jasper, Benton, Warren, Fountain, Parke, and Clay for the purpose of providing a railway and outlet from the coal-fields of Indiana into the city of Chicago and other points.

That afterwards, to wit, on the 14th day of July, 1881, the
136 name of said company was changed in pursuance of the laws
of said State to that of the Chicago & Great Southern Railway Company, one of said defendants.

That prior to the 18th day of March, 1882, but a few shares of the capital stock in said corporation had been issued, and that of said stock one Henry Crawford had become and then was the owner of a majority thereof, and by virtue of such ownership controlled the said defendant railway company.

That shortly thereafter, to wit, on the — day of ——, 1882, he elected the following persons to be directors of said company, to wit: William A. Starin, Henry Crawford, Jr., J. D. Lyon, C. L. Worden, D. H. Conklin, Geo. W. McDonald, and Fred. Lacy, being seven of the nine directors authorized by said railway company to form its board, which seven persons are and were his friends, kindred, employees, and servants, and who constituted a ruling majority of the board of directors, and were all and each of them under his personal control and domination so far as their official actions as directors was concerned, and who before and at the time of their election and qualification promised and agreed with said Crawford that they
would obey and carry out his wishes and directions in all
137 things whatsoever in the arrangement of said railroad.

And thereupon the said Crawford caused said board of directors to elect his employe- and servant, William A. Starin, president of said board, and his son, Henry Crawford, Jr., treasurer thereof, and he kept and retained said persons directors and officers as aforesaid from thence until the issuance of the stock and bonds, as hereinafter set out.

That prior to the 18th day of March, 1882, no work had been done upon said line by said railroad company of any value, and no stock had been subscribed and paid for and issued save a few shares for the purpose of keeping said corporation intact and enabling its board of directory to each hold one share, in order to qualify them for their several offices, and a few other shares to said Henry Crawford, to enable him to hold a majority of the stock and thereby dominate and control the franchises and operations of said company.

That on the 18th day of March, 1882, the said Henry Crawford,
being then a stockholder and the chief stockholder of said corpora-
tion, and thereby dominating the said corporations therewith and
through his said board of directors and officers as aforesaid,
137½ prepared and caused said railway company, through his said
board of directors, named, chosen, and pledged as aforesaid,
to enter into a construction contract with him, whereby he caused
said railway company to agree with him that he should build said
railroad, as the contractor, from Fair Oaks, in the county of Jasper,
that being the point chosen where said railroad should begin, to
connect with the Louisville, New Albany & Chicago railroad,
southerly through the counties aforesaid to Brazil, Indiana.

By said contract said Crawford proposed to procure for said com-
pany the right of way between said points; grade, bridge, tie, and
iron the railroad with iron or steel, with proper turnouts, switches,
cattle guards, and the like; erect all necessary shops, water tanks,
tool houses, turn-tables, stock-pens, and the like necessary; equip
said line with a sufficient number of engines and cars and other
rolling-stock to enable said company to transact the business thereof,
being an amount of equipments the same as is usually placed upon
railroads having and doing similar business, said business contem-
plated being that of a large carrier of coal and produce and
138 also a passenger carrier; also to construct a telegraph line
along said railroad and establish and supply proper stations
and telegraph offices sufficient for the safe and efficient operation of
the railroad.

In consideration whereof, by said contract, he caused the company to agree to pay him therefor all donations of stock, right of way, land, labor, material, and money that had been or thereafter might be acquired by the said company; also to pay him two million dollars of the fully-paid non-assessible shares of the capital stock of the company, that being the entire amount authorized by the articles of incorporation; also to pay him two million dollars of its first-mortgage six per cent. gold bonds; also to pay him two million dollars of its income bonds, those being the entire amounts of bonds authorized by said corporation to be issued upon its property, said bonds to be secured by a trust deed or mortgage by the company, made or to be made to the defendant, John C. New, in trust, in manner and form as is usual in the creation of railway securities. A copy of said contract is now exhibited herewith, marked "Exhibit A."

And said Crawford, in pursuance of said contract by him

139 made, prepared and caused to be accepted and adopted as aforesaid, further provided that he should have the possession and control of said railway company during its construction, and receive all the income and earnings of any and every kind until it was turned over to the company, and in order that he might raise money to be used in its construction he further caused the company, by the contract aforesaid, to agree that it should on his demand and for his accommodation execute and deliver to him its promissory notes and acceptances, which he should use in negotiating loans upon its credit, or he might use the same in the purchase of materials, labor, equipments, and the like to any amount he might think necessary.

And these plaintiffs show to the court that after the making of said contract the construction of said railway was begun, and as it progressed a very large amount of the labor, material, and supplies used therein and thereupon were purchased and obtained in the name of and upon the credit of the said railway company. The only part of said railroad ever constructed was the portion lying between Fair Oaks and Attica, a distance of about fifty miles.

And they are informed and believe, and therefore charge 140 the fact to be, that said railroad was not built in accordance with the terms and provisions of said contract; that the material used in the construction was inferior; that the work was slighted; that the rails were not steel, but iron; that less than three miles of sidings in all were made; that the buildings were few and poorly constructed, and that, in short, the honest and reasonable cost and expense of constructing said line of railroad between Fair Oaks and Attica, exclusive of a bridge over Big Pine creek and another over the Wabash river, did not exceed the sum of five thousand dollars per mile, and was not worth any amount in excess of that sum.

That in the construction of said railroad by said Crawford the said railroad company became indebted for labor, materials, and supplies in a large amount, exceeding in the aggregate over one hundred and fifty thousand dollars, which indebtedness the said Crawford refused to pay, and which is still unpaid.

That these plaintiffs, James McCalmont, Volney Q. Irwin, did work in grading said railroad under contracts with it, and he, the said McCalmont, on the — day of ——, in the Warren circuit 141 court, recovered a judgement for $— and enforcement of a contractor's lien.

The iron used upon said railroad was purchased of the Cleveland Rolling Mill Company, and the said Crawford neglected and refused to pay therefor; it, said Rolling Mill Company, on the 11th day of March, 1885, recovered a judgement against said railroad company, in the Newton circuit court, for the sum of $37,724.86, which then became a lien upon said railway property.

And it is further shown to the court that divers and sundry other creditors, from time to time, recovered judgements in the several countries through which said railroad passes against said company for work, labor, and supplies used in the construction of said railway, and for which said Crawford neglected and refused to pay, aggregating $—, a list whereof will be furnished to the court as soon as the same can be correctly ascertained.

And the said Smith Bridge Company erected the two bridges aforesaid, one over Big Pine creek, in Warren county, and the other over the Wabash river, under contracts made with the railway company, defendant, which are filed herewith and marked "Exhibit B," on account of which there remained in the aggregate the sum of $— unpaid.

142 By the terms of said contracts said bridges were to remain the property of the bridge company until it was fully paid; that after the failure of said Crawford and said company to pay therefor, the said bridge company demanded of said railway company the right and permission to remove said bridges, which the said railway company refused to permit to be done, and the same still remain in use on the line of said railway.

That the said firm of Coburn, Jones & Co. furnished lumber and other material for the erection of depots, sidings, and the like, and which was used by said Crawford, and for which there is still a balance due of $2,500.

That the plaintiffs, Hack & Hall, also did work and labor in the construction of said line of railway, for which the said Crawford has neglected and refused to pay, and they have a claim against said railroad for such work and labor, aggregating about $1,000.00, which is due and unpaid.

And the plaintiff, James Carnahan, shows to the court that he is a laborer, and that he has performed labor upon said railway in its construction and otherwise, and that — is still due him for
143 such work and labor the sum of $134.50, which the said Crawford or said railway company have failed and refused to pay, and which is due and unpaid.

And the plaintiffs further show to the court that there are about sixty-five other persons, laborers, who did and performed labor in the construction of said railroad, for whose labor the said Crawford neglected and refused to pay, and that it would needlessly encumber the record to insert their names and the several amounts owing them in this cross-bill, but that the aggregate amount of labor claims so owing and unpaid is about $24,000. A list of the names and amounts will be exhibited to the court as soon as the same can be accurately ascertained and made out.

And it is further shown to the court that some of said laborers have procured judgements; some have proved their work under a commission issued out of the Newton circuit court, all of which is on file in this proceeding, and a very large portion of the total bills are within the limitation of the six months' rule provided for the protection of labor and supplies in the order herein appointing a receiver.

And your petitioners further show that at the time of the
144 making of the said contract there was a line of railroad constructed from Attica southward, which was of little or no value; that the said Crawford had or could obtain the control

thereof for a mere nominal consideration, and that at the time of procuring the said construction contract, in anticipation thereof he caused said company to agree with him in the way aforesaid, that if he procured said railroad, known as the Chicago & Block Coal Railroad, to be consolidated into the Chicago & Great Southern Railway, that he should have therefor the same amount of stock and bonds per mile provided in said construction contract; and that thereafter, to wit, in the month of March, 1883, he caused and procured such consolidation, said constructed railroad extending thence from Attica to Yeddo, in Fountain county, a distance of about twenty miles; and thereupon, to wit, on April 9th, 1883, caused said defendant railroad company to execute a supplemental trust deed upon that portion of the property, being "Exhibit B" in the plaintiff's complaint.

The said Crawford did no work between Yeddo and Brazil, but abandoned the work; that portions of defendants' property, 145 between Yeddo and Attica, at the time when said consolidation took place was, in a great part, old, and was inferior and incomplete as a railway property.

After the consolidation and abandonment of the work as aforesaid, to wit, on the — day of ——, 188–, the said Crawford caused a meeting of the board of directors of the said defendant railway company to be held in the city of Chicago, for the purpose of receiving the report of said Hen-y Crawford concerning the performance of his said contract; that at said meeting there was not a quorum of the board of directors present, all the directors being his kinsmen, servants, and employés.

And thereupon, without authority of law, he caused said board to assume to elect another friend, Elisha Moore, a director, to fill out a quorum, said Moore, as these plaintiffs believe, having no interest in the said company; and he, said Moore, being then present, at the instance of said Crawford, assumed and did act and participate in said meeting, thereby filling out the quorum, and voted upon all questions arising in said meeting as if he were a legal director.

And thereupon, said board being illegally organized, as he, 146 said Crawford, well knew, he *thereupon* made a report to said board concerning his said contract, which he and said illegal board well knew had not been performed, but the contents of said report are unknown to these petitioners and therefore cannot be stated, but they ask that the company may be required to produce and exhibit the same to the court, and also to exhibit books and proceedings concerning the construction of said railroad.

And they aver the fact to be that if a true report of the work done and of all the facts as they then existed had been honestly made and honestly acted upon the said Crawford would not have been entitled to receive any portion of the alleged compensation for the construction of said railroad.

And they show that they are informed and believe, and aver the fact to be, that if a full, truthful, and complete report had been made then and there, showing the actual amount paid therefor by said Crawford, it would have appeared, as the facts then were and now

are, that the entire line did not fairly cost more than $300,000, and that the indebtedness outstanding then and there exceeded the sum of $150,000, and he, said Crawford, had not expended, in the aggregate, out of his own means to exceed $150,000, and whether
147 he did expend that sum, or less, cannot be known until an accounting shall be ordered and had showing the actual cost of the work done and paid for by him and the amount of donations and the like had and received by him on account thereof.

And these petitioners now show unto the court that the said Crawford and his said board of illegal directors, having the knowledge and means of knowledge of each and all the facts aforesaid, nevertheless, at said meeting, at the command and dictation of said Crawford, caused to be issued and to be delivered to him all of said bonds now in suit; also a large amount of the capital stock, believed to be about $1,200,000; and also a large amount of income bonds, believed to aggregate a similar sum.

And your petitioners show that the issuance of said stock and bonds was and is illegal and void.

After said Crawford had procured the same they were delivered to Morgan, Drexel & Co., bankers, of New York city, in pledge for an individual loan made to said Crawford, they, the bankers, then and there having knowledge of all the facts aforesaid.

Afterwards, and before the commencement of this suit,
148 Henry H. Porter and others formed a syndicate of association for the purpose of getting control of the Chicago & Great Southern Railway Company and of extending the line from Yeddo southward across the Indiana coal fields, through Brazil, to the Ohio river.

And thereupon an arrangement was made with said Crawford by which said stock and bonds were taken out of pledge and delivered to said Porter, and the said Morgan, Drexel & Co. were paid the sum advanced by them, with interest, aggregating less than $400,000.

And as a further part of said arrangement between Porter, Crawford, and their associates it was agreed that Porter should file a bill foreclosing said mortgages on account of said bonds against all the persons having or asserting any claim or lien against the property, and extinguish the same and organize a new corporation, to whom the property should be conveyed; that said Porter should not advance in all to exceed $500,000, including the sums advanced to Morgan, Drexel & Co.; that the said Crawford should have the benefit of the difference between $500,000 and the amount necessarily expended in foreclosing and extinguishing said mortgage and acquiring the ownership of the defendant's railway property.

149 It was further arranged and understood that another railway company should be organized, extending from Yeddo southward as aforesaid, and to be consolidated with the property of this company when procured, and the railroad thus built through the Indiana coal-fields and profits arising should be divided between Porter, Crawford, and their associates.

And in pursuance of said arrangement the said Porter and certain of his associates did on the 9th day of May, 1885, incorporate under the laws of Indiana a railroad from Yeddo through to Brazil and across the Indiana coal-fields to the Ohio river, with a capital stock of $100,000, of which said Porter then subscribed $95,000, and the rest was taken by the friends and associates of said Porter and said Crawford; and also in pursuance of said arrangement this suit is brought and prosecuted.

And petitioners show that the said Porter and the others associated with him, whose names will be hereafter be given, each and all knew, before and at the time of entering into the arrangements and before advancing any money, each and all of the facts hereinbefore stated concerning the issuance of said stock and bonds.

150 And now your petitioners humbly show unto the court that said construction contract is fraudulent and void at the election of said railway company or any of its stockholders; that the board of directors of said railway company, *and* being under the domination and control of said Porter and said Crawford and their associates, do refuse to make any defense to this action; but, on the other hand, they have caused or permitted Henry S. Gardiner, an attorney-at-law, who has long been and is now is the counsellor and advisor of said Porter, to file an answer on behalf of said corporation, to file an answer confessing each and every allegation in the bill of complaint, and thereby seek to cut off and prevent the court from being advised of the facts herein set out, and to carry out and consum-ate the inequitable and unlawful purpose of said combination and conspiracy.

And these petitioners show that if they are permitted so to do they will defeat the rights of the creditors of said railway and destroy the rights of the *bona fide* stockholders.

Your petitioners show that they are informed and believe, and therefore aver the fact to be, that the persons forming such
151 association or syndicate to gain control of the property of the railway contributed or agreed to contribute the sums set opposite their names, to wit:

Henry Seibert	$50,000
David Dows	25,000
J. M. Durand	25,000
A. J. Leith	25,000
Robert Law	25,000
Isaac H. Wing	15,000
E. W. Winder	5,000
E. H. Lawrence	5,000

and the remainder by said Porter, or said Porter and said Crawford.

Your petitioners further show, upon information and belief, that said Porter is not the trustee of his associates aforesaid in any sense which authorizes him to sue in his own name herein, and they ask that said Porter be required to discover and disclose the names of the persons associated with him to the end that they may be made parties to this action.

Your petitioners further show that the said Porter asserts in this

court that the issuance of said bonds was lawful; that the property of the railway company is an inadequate security for said debt; that the corporation is insolvent; that the said mortgage and
152 bonds are the first lien upon the property of the company; that said John C. New, trustee, refuses to maintain any action or take any steps for the enforcement of said bonds or the protection of said property, whereas the truth is that the said issuance of bonds was illegal and without consideration, and the said mortgages are fraudulent, null, and void, and the said New refuses to act at the instance and connivance of the said Porter and his associates for the sole purpose of enabling said Porter to bring and remove said action into this honorable court.

And your petitioners further show that when said railroad is completed to Brazil or beyond, and thereby affording an outlet from the Indiana coal-fields, it will be a valuable railroad property; that if an accounting is had of the sum actually expended by said Crawford and paid out of his own means, and of the other indebtedness outstanding for labor, supplies, and the like, that the property is of vastly greater value than the sum of such indebtedness; or if the court would levy an assessment upon the unpaid stock issued to said Crawford and now held by said Porter for the par value
153 thereof, and compel its payment, it would provide a sum sufficient to pay off and discharge all of the valid and existing claims against said company, including any and all sums advanced by said Crawford, and leave a sum sufficient to complete the line from Yeddo to Brazil.

Wherefore your petitioners humbly pray that an accounting may be had as to the cost of the work performed and paid for by said Henry Crawford upon the construction of said railway; also that the market value of the road from Attica to Yeddo, known as the Chicago & Block Coal railroad, may be ascertained at the time the same was consolidated into the Chicago & Great Southern Railway Company.

Also that a further accounting be had as to the indebtedness existing and unpaid arising out of the construction of the said railway, and that it be stated and found whether the same was incurred upon the credit of the railway company or upon the credit of said Henry Crawford; that the mortgages set out in the bill of complaint, "Exhibits A and B," and referred to herein and made a part hereof,
154 be cancelled as fraudulent and void, and that the said plaintiff be required to produce the bonds held by him, or him and his associates, and file the same in this court, and that they be cancelled as void; that the stock issued to said Crawford, hereinbefore mentioned, be declared null and void, and that the said plaintiff be required to produce the same in this court that the same may be cancelled; or, if the court shall deem it more in consonance with equity and good conscience, that he or they may be permitted to hold and retain the stock of the par value of the sum actually due said Crawford and said Porter upon a final accounting herein and the remainer of said stock be hereafter cancelled; or that the court will order an assessment to be made and collected upon said stock

for a sum sufficient to liquidate all the indebtedness of said railway company, and find and ascertain what amount is thereafter due from the holders of said stock upon so much thereof as shall not be returned and cancelled.

And these petitioners further pray the court that their several liens and claims and interests, as hereinabove set forth, may be found and ascertained upon final hearing and decree, and that such 155 decree and judgment be pronounced as will best protect their interest and preserve and protect the rights of said railway company.

And your petitioners further pray that the court will ascertain on final hearing the amount due for labor and supplies furnished to and used in and upon the road, and will declare the same to be a prior and first lien upon the property, superior in equity to the claims or liens of any or all other persons, for the benefit of all persons of such class or classes as may become parties before final decree.

And will the court further find and ascertain what contractors' or mechanics' lien exist upon and against said property and find, order, and decree the amount, date, and order of priority thereof.

And, as to the said bridge company, that the court will determine its rights and declare that it may remove said bridges, or, if found to be of more value to the company, that the same shall remain; then that the balance due thereon be ascertained and declared to be a first and prior lien upon the railway property, 156 superior to the liens of any and all other persons, save and excepting only those of the laborers' and mechanics' liens which have priority in equity and right,

And will the court grant unto your orators the writ of subpœna, issued out of and under the seal of this honorable court, to be directed to the defendants to this cross-bill and each of them, commanding them and each of them to appear herein at a time and under a penalty to be therein named, and there to stand by and perform each and singular the orders and decrees as to your honors shall seem agreeable in equity and good conscience, and that your orators may have such other and further relief as in equity and good conscience may to your honors seem meet.

And your orators will ever pray.

THE SMITH BRIDGE CO.,
THE CLEVELAND ROLLING MILL CO. &
OTHERS, *Cross-Complainants,*
By STRAIGHT, WILEY & CASTEN,
JOHN S. COOPER.
HARRIS & CALKINS, *Solicitors.*

STATE OF INDIANA, }
County of Marion, } *ss:*

157 U. Z. Wiley, one of the solicitors for cross-complainants, being duly sworn, says that the foregoing bill of complaint has been read over to him and he is fully informed of the contents thereof; that the matters and things therein set forth, so far as they

are known to him, are true, and so far as they are set forth on information and belief he believes them to be true; and further saith not.

U. Z. WILEY.

Subscribed and sworn to before me this 3rd day of July, 1885.

NOBLE C. BUTLER, *Clerk.*

And at the same time, on said 4th day of August, 1886, before the honorable judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the Smith Bridge Company, by Straight, Wiley & Carter, and Harris & Calkins, its solicitors, and files its answer herein in the words following, to wit:

158 Answer of the Smith Bridge Company, a corporation organized and existing under the laws of the State of Ohio, to the bill of the said Henry H. Porter, complainant, against the Chicago & Great Southern Railway Company.

This defendant, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exceptions to the many errors, uncertainties, and imperfections in the said bill of complaint contained, for answer thereunto or unto so much thereof as this defendant is advised is material and necessary for it to make answer unto, answers and says: That heretofore, to wit, on the — day of ——, in the year 18—, it entered into a contract with the defendant, The Chicago and Great Southern Railway Company, for the erection of two bridges—one over the Wabash river, near Attica, Indiana, and the other over Big Pine creek, near Pine Village, Indiana—by the terms of which contract it was agreed with the said railway company to construct said bridges according to approved plans and methods at and for the stipulated price and sum of $—. A copy of said contract is filed with this answer, marked "Exhibit A," and is hereby referred to for greater certainty.

159 That by the terms of said contract said bridges when constructed were to remain the property of the said bridge company and the title should not pass to the railway company until it had fully paid it for them; that in accordance with the terms of said contract this defendant did construct said railroad bridges, and said railroad company made payment on account therefor as follows: On the bridge over the Wabash river the sum of $—, and on the bridge over Big Pine creek the sum of $—, leaving still due in the aggregate for said two bridges the sum of $21,890.24.

That after the failure of the said railway company to pay therefor said defendant demanded of said railway company permission to remove said bridges, which the company refused to permit to be done, and the same still remain in use on the line of the said railway.

And the defendant further says that on the 8th day of March, in the year 1880, a railroad company was incorporated under the laws of this State by the name of the Indiana & Chicago Railroad Company; that it ran through Jasper, Warren, Benton, Fountain, Parke, and Clay counties, of this State; that the purpose of its promoters was to reach the coal fields of Indiana and provide an outlet 160 therefrom to the city of Chicago and other points; that afterwards, to wit, on the 14th day of July, 1881, the name of the company was changed, in pursuance of the laws of this State, to the Chicago and Great Southern Railway Company, one of the defendants herein; that prior to the 18th day of March, 1882, but few shares of the capital stock of said corporation had been issued, and one Henry Crawford had become the holder and owner of a majority thereof, and controlled the board of directory as well as all of its business relations.

That on the — of ——, 1882, he elected the following persons directors of said company, to wit: William A. Starin, Henry Crawford, Jr., D. J. Lyon, C. L. Worden, D. A. Conklin, Fred. F. Lacy, and J. M. McDonald, they constituting seven of the nine directors authorized by the said company to form its board. All of the persons named were his friends, kindred, employees, and servants, and constituted a ruling majority in all of the meetings of the said board. They were all subject to his personal control and domination, so far as their official actions as directors were concerned, and were elected and qualified under the promise and agreement to carry out the wishes of the said Henry Crawford in and about the premises.

161 After the election of the directory as aforesaid Henry Crawford caused his employé and servant, William A. Starin, to be elected president of the board, and his son, Henry Crawford, Jr., secretary, and a part of the time treasurer thereof. They were all retained as directors in the company until the issuance of the stock and bonds hereinafter mentioned in the bill of the said Porter.

On the 18th day of March, 1882, no work had been done upon said line of railroad of any value, and no stock had been subscribed and paid for except a few shares held by said Henry Crawford for the purpose of managing and controlling the corporation, as hereinbefore set out, and the stock held by him was in effect not paid for, and was held simply for the purpose of enabling him to dominate and control the operations of the corporation.

That on the 18th day of March, 1882, said Henry Crawford, then a stockholder and the chief stockholder of said corporation, and thereby dominating and controlling it, with the board of directors organized as aforesaid, all of whom he controlled, prepared and caused said railway company, through its directors, to enter into a construction contract with him, whereby he caused the com- 162 pany to agree that he should build the railroad as the contractor from Fair Oaks, in the county of Jasper, to Brazil, in Clay county, in the State of Indiana.

By the terms of said contract said Crawford proposed to procure for the company the right of way, grade, bridge, tie, and iron the railroad with iron or steel rails, and supply and construct proper turn-outs, switches, cattle-guards and the like, and erect all necessary shops, water-tanks, tool-houses, turn-tables, stock-pens, and the like necessary to equip said line for operation, and also to furnish a sufficient number of engines and cars and other rolling-stock to enable the company to transact business such as is usually placed upon railroads similarly situated and doing a like business, said business contemplated being that of a large carrier of coal and produce, as well as passenger carrier; also to construct a telegraph line along said railroad and establish and supply proper stations and telegraph offices sufficient for the safe and efficient operation of the railroad.

In consideration whereof he caused the company by said contract to agree to pay him therefor all donations, voted aid, right of way, land, labor, material, and money that had been or thereafter
163 might be acquired by the company; also to pay him two million dollars of the full-paid-up, non-assessible shares of the capital stock of the company, that being the entire amount of its authorized shares of stock.

Also to pay him two million dollars of its first-mortgage six per cent. gold bonds; also to pay him two million dollars of its income bonds, that being the entire amount authorized to be issued upon its property.

The bonds were to be secured by a trust deed or mortgage, and the defendant New was to be the trustee, all in the form usual in the creation of railway securities. A copy of the contract is filed herewith and marked " Exhibit B " for the information of the court.

And said Crawford further caused the said railway company to agree with him that he should have the possession and control of the railway company during its construction, and receive all the income and earnings of every kind arising therefrom until he should turn it over. In order that he might raise money to be used in its construction, he caused the company to contract with him that it should on his demand and for his accommodation execute
164 and deliver to him its promissory notes and acceptances, which he might use in negotiating loans, or he might use the credit of the road in purchasing material, labor, equipments, or whatever he might think necessary.

After the contract was made and the construction of the railroad was begun a large part of the material, supplies, and labor in the building and construction of the railroad was obtained in the name and upon the credit of the railroad company. The only part of the railroad ever constructed was that portion lying between Fair Oaks, in Jasper county, and Attica, in Fountain county, a distance of about sixty miles.

The defendant shows to the court that the railroad was not built in accordance with the terms and provisions of the contract. The material used in its construction was inferior; the work was slighted; the rails were iron; there was less than three miles of sidings constructed; there were but few buildings constructed, and they were poorly built. In short, the honest and reasonable cost and expense in constructing the line between Fair Oaks and Attica, exclusive of the bridges over Big Pine creek and the Wabash river, did
165 not exceed the sum of five thousand dollars per mile, and is not worth to exceed that sum; that in the construction of the railroad by Crawford it became indebted for labor, materials,

and supplies, and for work done in operating it in a large amount, exceeding in the aggregate over $150,000, which indebtedness Crawford refuses to pay, and it is still unpaid.

That said Crawford received in cash from the tax-payers of Union, Iroquois, Oak Grove, and — townships the sum of about $52,000 as taxes, or voted aid by said taxpayers of said townships to said railroad company.

The defendant further shows that at the time of making the contract with said Crawford there was a railroad constructed from Attica southward to Yeddo, but that it was of little value; that the said Crawford had or could obtain the control of it for a mere nominal consideration; that at the time of procuring the contract with the company in anticipation thereof he caused it to be agreed in the contract aforesaid that if he procured the railroad known as the Chicago & Block Coal railroad to be consolidated into the Chicago & Great Southern Railway Company that he should
166 have therefor the same amount of stock and bonds per mile as provided for in the construction contract aforesaid.

That in the month of March, 1883, he procured such consolidation with said Chicago & Block Coal Railroad Company, extending from Yeddo, in Fountain county, to Attica, a distance of about twenty miles. On April 9th, 1883, he caused the defendant railway company to execute a supplemental deed of trust upon that portion of the property, being "Exhibit B" in the plaintiffs' declaration; that said Crawford did no work between Yeddo and Brazil, but wholly abandoned the work. The line of railroad between Yeddo and Attica at the time of the consolidation was old, inferior, incomplete, and of very little value as a railroad property.

After the abandonment of the work, to wit, on the — day of ——, 188–, said Crawford caused a meeting of the board of directors of the defendant railway company to be held in the city of Chicago for the purpose of receiving the report of him, the said Crawford, concerning the work he had done under his said contract; that at said meeting there was not a quorum of the board of directors present, and all that were present were his kinsmen, servants, employees, and especial friends.

167 And that thereupon, without authority of law, he caused said board to assume to elect another friend and employee, one Elisha Moore, Jr., a director to fill out a quorum at the time of said election. Said Moore had no interest in said railroad company and owned no stock therein. The said Moore, being then present, at the instance and request of said Crawford, assumed to aid, did act and participate in the meeting, and voted on all questions arising as if he were a legal director; that no quorum of legal directors were present, and that it took his presence to make out a quorum.

Thereupon said board being illegally organized, as said Crawford well knew, received the report which he, said Crawford, then and there made respecting the performance of his contract with said railway company, but which report is unknown to the defendant and therefore cannot be here stated. He asks that the said railroad company be required to exhibit it, and also to exhibit the books wherein are written the proceedings which took place at said meeting and immediately thereafter.

And the defendant says that if a true report of the work done and of all the facts as they then existed had been made and 168 honestly acted upon said Crawford would not have been entitled to receive any portion of the alleged compensation for the construction of the said railroad; that if a fair and honest report had been made as the facts were and now are it would have appeared that the entire line constructed by the said Crawford had not cost him more than $300,000, and the outstanding indebtedness then and there exceeded the sum of $150,000, which would only leave the sum of about $150,000 which the said Crawford had then and there expended in and about the work in constructing said railroad; that he had received a large amount of donations and the like along the line of the railroad, which would still reduce the amount of money which he had put therein.

And the defendant further shows that at said meeting of the board of directors illegally organized, as before stated, the said Crawford caused and procured it to issue and deliver to him all of said bonds now in suit and also a large amount of the capital stock of the company, believed to be about $1,200,000, and income bonds believed to aggregate a similar sum. And the defendant charges that all of said acts and the issuance and delivery of said 169 bonds and the issuance and delivery of said stock was illegal and void.

After said Crawford had procured said bonds and stock he delivered them to Drexel, Morgan & Co., bankers, in New York, by way of pledge for an individual loan of money made by them to him, for about the sum of $350.000. But the defendant avers that said Drexel, Morgan & Co. had notice and knowledge of all the facts aforesaid, and of the illegality of the issue of said bonds, and the illegality of the construction contract of the said Crawford.

Afterwards, and before the commencement of this suit, the complainant, Henry H. Porter, formed a syndicate or association for the purpose of getting control of the Chicago & Great Southern Railway, and of extending it from Yeddo southward across the Indiana coal-fields to the Ohio river. Thereupon an arrangement was made by and between said Porter and said Crawford by which the stock and bonds theretofore delivered to Drexel, Morgan & Co. in pledge were taken up, and the said bonds and stock were repledged by the said Crawford to the said Porter for the advancement by the said Porter and his friends to Drexel, Morgan & Co. of the amount of money which they had advanced to said Crawford, aggregating the sum of about $400,000.

170 As a further part of said arrangement between said Porter, Crawford, and their associates, it was agreed that Porter should file a bill foreclosing said mortgage on account of said bonds between all persons having or asserting any claim or lien against the property of the railway company, and extinguish the same and organize a new corporation to whom the property after such foreclosure proceedings and sale should be conveyed.

It was further agreed between the said Crawford and Porter and his associates, that said Porter should not advance not to exceed $500,000, including the sum advanced to Drexel, Morgan & Co.; that the said Crawford should have the benefit of the difference between the amount Porter and his friends paid to Drexel, Morgan & Co. and said $500,000, but in no event was Crawford to receive more than $250,000; that the sum the said Crawford was to receive depended somewhat upon the amount which it cost to extinguish the debts and liabilities of the said railroad in this foreclosure proceeding.

It was further arranged and agreed that another railroad company should be organized, extending from Yeddo southward to the Ohio river, which should be consolidated with the defendant,
171 Chicago & Great Southern Railway Company; the profits arising therefrom and from the completed road should be divided between the said Porter, Crawford, and their associates.

In pursuance of said arrangement and understanding, on the 9th day of May, 1885, said Porter and his associates did incorporate under the laws of Indiana a railroad from Yeddo, through Brazil, to the Ohio river, with a capital stock of $100,000, of which sum Porter subscribed $95,000 and the rest was taken by said Crawford and his friends, all in pursuance of the arrangements aforesaid.

Defendant shows that the said Porter and his associates, whose names will be given hereafter, each and all of them knew before and at the time of entering into the arrangement, and before advancing any money, all the facts hereinbefore stated concerning the illegal construction contract with said Crawford, the illegality of the issuance of the said stock and bonds, and of all the other illegal acts hereinbefore more specifically set out.

The defendant shows unto your honors that the construction contract made or pretended to be made between the said Crawford and the said railroad company is fraudulent and void at the election of the stockholders or creditors of the said company; that the
172 board of directors of the railway company were and still are under the control and domination of said Crawford, and the said Porter and the said railway company refuse to make any defence to this action, but on the contrary have caused or permitted an attorney-at-law who has long been and now is the counsellor and advisor of the said Porter to file an answer on behalf of the corporation, confessing each and every allegation in the complaint set out, thereby seeking to cut off and prevent the court from being advised of the facts hereinbefore set out, and to carry out and consum-ate the inequitable and unlawful purpose of said combination and conspiracy.

And the defendant says if they are permitted to do so it will defeat the rights of the creditors of the said railway company and destroy the rights of the *bona fide* owners of the shares of stock of said company.

And the defendant shows to your honors that the persons who are associated with the said Porter in the scheme heretofore set out in this answer, and who contributed or agreed to contribute to the raising of the money to take said bonds out of pledge are as follows, with the sums agreed to be paid by each set opposite their names, to wit:

173	Henry Seibert	$50,000
	David Dowe	25,000
	J. M. Durant	25,000
	A. J. Leith	25,000
	Robert Law	25,000
	Isaac H. Wing	15,000
	E. W. Winder	5,000
	E. H. Lawrence	5,000

and the remainder by said Porter or said Porter and Crawford.

The defendant further shows that the said Porter is not the trustee of his associates in any sense which authorizes him to sue in his own name herein, and they ask that said Porter be required to disclose whether the names above given are his associates, or the names of any other persons associated with him, to the end that they may be made parties hereto.

The defendant further says that the said Porter asserts in this court that the issuance of the said bonds was lawful; that the property of the railway company is an inadequate security for said debt; that the corporation is insolvent; that the mortgage and bonds are a first lien upon the property of the company; that said John C. New refuses to maintain any action or take any steps to the enforce-
ment of the said bonds and the protection of the said prop-
174 erty; whereas the truth is the issuance of said bonds was
illegal and without consideration.

The mortgages are fraudulent and are therefore null and void; that said New refuses to act at the instance and request of the said Porter and his associates, or some of them, for the sole purpose of enabling Porter to bring and remove this action into this honorable court.

When the road is completed, if it ever should be, to Brazil and beyond, affording an outlet from the Indiana coal-fields, it will be a valuable railroad property; that if an accounting is had of the sum actually expended by said Crawford and of the other indebtedness outstanding for labor, supplies, and the like, it will be found that the property is of *vaster* greater value than the sum of such indebtedness.

And the defendant asks that the matters and things herein alleged be considered, to the end that the bonds and mortgage claim by the said Porter be annulled and set aside, and that the debt of this defendant be protected, and that it be allowed to take out the bridges held by said railway company under said contract, or de-
nying which will the court find, order, and decree that
175 its lien is a paramount and superior lien to any and all
others to the full value of the amount remaining unpaid
against said railway company and its property.

And this defendant denies all and all manner of unlawful combination or confederacy wherewith it is by the said bill charged, without that, that any other matter or thing in the said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable cost and charges in this behalf most wrongfully sustained.

SMITH BRIDGE COMPANY,
By STRAIGHT, WILEY & CARTER,
HARRIS & CALKINS, *Solicitors.*

And at the same time comes Volney Q. Irwin by Kennedy & Kennedy, Straight, Wiley & Carter, and Harris & Calkins, his solicitors, and files his answer herein in the words following, to wit:

176 The said defendant, now and at all times, saving and reserving to himself all manner of benefit and advantage of exceptions to the many errors, uncertainties, and imperfections in the said bill of complaint contained, or unto so much thereof as this defendant is advised is material and necessary for him to make answer unto, answering, says that heretofore, to wit, on the 9th day of November, in the year 1881, he entered into a written contract with the codefendant, the said Chicago and Great Southern Railway Company, to do the grading, grubbing, excavating, and filling on the railroad of said defendant from a point near the town of Oxford, in Benton county, Indiana, to a point known as Independence or Kickapoo Grade, in Warren county, Indiana, a distance of about
177 fourteen miles, or thereabouts, which contract was in writing and is filed with his cross-bill herein and marked Exhibit "A," and to which he begs leave to refer with like effect as if the same were herein set out.

In pursuance of said contract he commenced working near the town of Oxford on the 10th day of November, 1881, and completed and turned it over to the railroad company on the 15th day of September, 1883; that at the time he commenced said work under said contract no work whatever had been done on said railroad between said points, nor had the railway company located or procured the right of way for its railroad through either of the said counties, or any part thereof; nor had it filed in either of the counties any profile of its railroad, or the line of location thereof; nor had they filed such profile and survey until long after the recording of the
178 mortgage in complainant's bill mentioned.

At the time the said defendant commenced work on said railroad the complainant had not recorded the mortgage in said counties, or either of them, nor had the defendant any notice or knowledge, at the time of the commencement of the work, that there was any such mortgage in existence.

The defendant says that under said contract he did all the work mentioned therein between the points mentioned, and that the contract price amounted to the sum of $55,000; that the company, from

time to time, paid him therefor in money, in all about $43,000, leaving a balance due him of about $12,000; that on the — day
179 of October, in the year 1883, and within sixty days after he completed said work, he filed in the office of the recorder of Warren county a notice of his intention to hold a lien on all of said work—grades, embankments, excavations, bridges, and the like—made by him under said contract, to secure the balance due him from said railroad company; that on the — day of October, 1883, he also filed a copy of the said notice in the recorder's office in Benton county. Copies of the notice of the lien as filed in said offices, with the date of the recording thereof, are filed with his cross-complaint in this cause, marked Exhibit "B," and to which he prays leave to refer with like effect as if the same were made a part hereof.

180 The defendant Irwin further shows to the court that on the 22nd day of October, 1884, he commenced his action in the Warren circuit court, in said State, to recover and did recover against said defendant, The Chicago and Great Southern Railway Company, a judgment for the amount due him under said contract, and did obtain an order and decree of the said court foreclosing his said mechanics' lien on the said part of the railroad so constructed by him. The amount found to be due him and for which judgment was rendered was the sum of $11,781.16 and costs of suit, taxed at $—, and the said railroad and all that part thereof between
181 the points hereinbefore named which lay in the county of Warren was by the judgment and consideration of the court ordered to be sold for the payment of the amount so found to be due him; that the said judgment and foreclosure proceedings of his said liens are now in full force and unpaid; that he likewise, on the — day of ——, in the year 1884, commenced his suit in the Benton circuit court to foreclose his said lien on all of the railroad lying between Oxford and the Warren county line, in said county of Benton, and which said suit and action is still pending, and was pending at the time of the appointment of the receiver herein.

182 And said defendant further says that the mortgage which the said Henry H. Porter seeks to foreclose in this suit was executed and recorded in the county of Benton and county of Warren before the said Chicago and Great Southern Railway Company had finally located its railroad between the points mentioned in said contract and hereinbefore set out. The company had not sold any of its bonds when said mortgage was executed and recorded. None of the bonds mentioned in the mortgage were sold until long after the work was completed by this defendant and he had filed his notices of a lien on the railroad in the said counties; that there is now due him on the said claim about the sum of $15,000, which he alleges and charges is a superior and paramount lien to the mortgage set out and claimed by the said complainant, Henry H. Porter.

183 The defendant further shows to the court that there are various and sundry judgment creditors in a large amount, to wit, the sum of $—, who holds liens and claims against said rail-

road, which he believes to be superior and paramount to the lien of the said complainant, Henry H. Porter.

He files this answer on behalf of himself and all other like creditors who have liens, either by way of foreclosure, mechanics' lien, or judgments against the said railroad, and who may desire to come in under the decree herein rendered.

He further shows to the court that a schedule and list of said creditors with the amounts due them, some of which are in judgment and some are not, is filed with the answer of John 184 Peterson and others in this cause, and to which he makes reference, and so far as the same is material he asks that the same may be taken as a part of this answer, with like effect as if filed herewith and made a part hereof.

The said defendant further shows to the court that the Smith Bridge Company has filed an answer herein which particularly set out and alleges various conspiracies and fraudulent conduct on the part of the said complainant, Henry H. Porter, and a collusion with his said codefendant, The Chicago and Great Southern Railway Company, and with one Henry Crawford, all of which allegations he adopts and makes them a part of this answer, and hereby refers to the same, and prays that the allegations therein may be 185 taken as a part of his answer herein, with like effect as if the same were set out more fully and at large by him in this answer.

VOLNEY Q. IRWIN.

KENNEDY & KENNEDY,
STRAIGHT, WILEY & CARTER,
HARRIS & CALKINS,
Solicitors.

And afterwards, to wit, at the May term of said court, on the 11th day of August, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the Pittsburgh Bessemer Steel Company (Limited), by John N. Jewett and Baker, Hord & Hendricks, its solicitors, and by leave of court files its intervening petition herein in the words following, to wit:

186 To the honorable the judges of the circuit court of the United States for the district of Indiana:

The intervening petition of the Pittsburgh Bessemer Steel Company (Limited), of Pittsburgh, Pennsylvania, respectfully showeth unto your honors that your petitioner is a corporation organized and existing under the laws of the State of Pennsylvania; that on or about the third day of October, 1881, your petitioner entered into a contract with the said defendant, The Chicago & Great Southern Railway Company, for the sale to said company of two thousand tons of steel rails, weighing fifty-two pounds per lineal yard, at the price of fifty-nine dollars and sixty cents per ton, to be shipped to Goodland, Indiana, and to be paid for in cash by said railroad company when shipped at Pittsburgh, Pennsylvania.

And your petitioner further represents that by the terms of said contract one thousand tons of said rails were to be shipped
187 during the month of November and one thousand tons during
the month of December, in the year 1881; but that at the request and for the convenience of said railway company the shipment of said rails was deferred beyond the period stipulated for such shipment as aforesaid, and until January 10th, 1882, on which day and on January 12th, 1882, at the request of said railway company, your petitioner shipped a portion, to wit, in the aggregate three hundred and fifty-seven tons of said rails to Goodland, Indiana; but said railway company failed to pay for the same, either upon their shipment or upon their arrival at Goodland, and by agreement then and there made between your petitioner and said railway company, and for the purpose of enabling your petitioner to retain possession and control of said rails until paid for by said railway company, said rails were stored at Goodland under the care of a custodian who was to hold and retain the same subject to the orders of your petitioner.

188 And your petitioner further represents that your petitioner
never delivered said rails or any portion thereof to said railway company, or directed said custodian so to do, or in any manner consented to such delivery, but that shortly after said rails were stored as aforesaid, said railway company, without having paid for said rails or any part thereof, and without the knowledge or consent of your petitioner, by some means unknown to your petitioner and in fraud of its rights in the premises, obtained possession of said rails, and without the knowledge or consent of your petitioner laid them in the track of said railway company; and your petitioner did not for a long time thereafter learn of the said wrongful taking and use of said rails and is unable to state in what portion of said railroad track the same were laid or to identify the same in said track or reclaim them specifically.

Your petitioner further states that since learning of the
189 taking of said rails it has repeatedly demanded payment
therefor from said railway company, and has at all times claimed to have a lien thereon and upon the track and roadway of said company for the value of said rails, according to the contract price as aforesaid; but that, except as to the sum of ten thousand dollars paid on account thereof by said railway company, your petitioner has not been paid for said rails and there is still due from said railway company to your petitioner on account of said rails the sum of sixteen thousand two hundred and ninety-one dollars and sixty-five cents ($16,291.65), as shown by statement of account hereto attached, with interest from March 1st, 1855, on the principal sum of $13,013.17.

And your petitioner further represents that said rails were so taken and laid by said railway company prior to the issue by said company of any of the bonds secured by the mortgage in controversy herein; and that the holder of the bonds of said com-
190 pany, the said Henry H. Porter, complainant herein, and
others, if any, for whose benefit this suit is prosecuted, ac-

quired their said bonds with full notice of the rights and claims of your petitioner in the premises, as hereinbefore set forth, and subject thereto.

Your petitioner therefore prays, the premises considered, that its claim aforesaid against the said railway company may be settled and adjusted in accordance with the rules and practice of this honorable court, and the amount thereof, when so ascertained, may be declared to be a lien upon the income and earnings of said railway company, and upon the proceeds of the sale of said railway, if such sale shall be made, in preference to the bonds of said company referred to in the original bill of said Porter, complainant in this cause, and that payment of the same may be decreed out of the earnings or proceeds of sale aforesaid, as a preferred claim under the facts above set forth and the law applicable thereto; and your petitioner will ever pray, etc.

JOHN N. JEWETT AND
BAKER, HORD & HENDRICKS,
Sol's for the Pittsburgh Bessemer Steel Co.

191 *Copy of Contract.*

Chicago & G't Southern R. R. Co., 125 Dearborn Street, Chicago.
Schrader & Ellery, Chicago.

CHICAGO, 30 *Sept.*, 1881.

DEAR SIRS: We have to-day bought for your account from Pittsburgh Bessemer Steel Co., Limited, a lot of steel rails on the following conditions, viz:

Quantity, two thousand tons. Brand or make, Pittsburgh Bessemer Steel Co. make. Quality, best. Price, $59.60 (fifty-nine dollars [and] sixty cents) per ton, 2,240 lbs., f. o. b. works. Terms of payment, cash on delivery of bills [of] lading; inspectors certif. for each 500 tons as fast as shipped, by sight draft, with exchange on N. Y., with b. l. & ins. cer. Place of delivery, f. o. b. works at Pittsburgh. Time of shipment, one thousand tons during November, one thousand tons during December, 1881. Shipping directions, rails to be shipped per Pennsyl'a Company to Goodland, Indiana.

NOTE.—Rails to be 52 lbs. per yard; weight 90 %; to be of
192 30′ length with not over 10 % of shorter length, and to diminish by 1 ft. differences; second quality rails, not exceeding 5 %, to be taken at 10 % reduction; inspection at mill at the expense of the purchaser.

Yours truly, SCHRADER & ELLERY.

We confirm your action on our behalf, as expressed in the above contract, and accept the same as binding on us in every respect as set forth.

Oct. 3, 1881.

[Seal Chi. & G't Southern R'y Co.]

CHICAGO & G'T SOUTHERN R'Y,
By H. CRAWFORD, JR., *Sec.*

Correct since interlineation.

H. CRAWFORD, JR.

193 MARCH 1*st*, 1885.

Chicago and Great Southern Railway Company in acc't with the Pittsburgh Bessemer Steel Company (Limited).

1882.				
Jan. 10.	To 303.1960 tons 52-lb. rails × 59.60 =	$18,110 95.	Int. 3 yrs. 1 mo. 18 days @ 6 % ...	3,404 86
" 12.	" 53.1400 " " " × " =	3,196 05.	" 3 " 1 " 16 " " ...	599 79
" 31.	" loading & unloading rails	43 00.	" 3 " 1 " 0 " " ...	7 96
Feb'y 1.	" freight paid	1,594 20.	" 3 " 0 " 27 " " ...	294 13
" 28.	" traveling exp's H. P. Smith	66 15.	" 3 " 0 " 0 " " ...	11 91
Ap'l 11.	" protest fees	2 82.	" 2 " 10 " 19 " " ...	50
1885.		23,013 17		4,319 15
M'ch 1st.	To interest per margin	4,319 15		
				$27,332 32

CR.

1883.					
May 10th.	By cash	8,000 00.	Int. 1 yr. 9 mos. 18 days @ 6 %	$864	
Sept. 8	" "	2,000 00.	" 1 " 5 " 20 " "	176 67	
1885.		10,000		1,040 67	
M'ch 1.	" int. as per margin	1,040 67			
					$11,040 67
	Bal. due M'ch 1st, 1885				$16,291 65

193*a* And afterwards, to wit, at the May term of said court, on the 15th day of August, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the receiver, by counsel, and files his petition herein in the words following, to wit:

193*b* H. H. Porter, advances on pay-rolls and material	29,730 00
Pay-roll, July	8,029 69
Pay-roll, August, approximated to the 15th	4,014 84
Vouchers, July	2,278 82
Vouchers, August, approximated to the 15th	2,567 50
Coal bills, July, and to Aug. 15th	900 00
Ties and fence posts	1,020 00
Total	$48,540 85

Approximate cost of tools and machinery needed for the economical working of the property, and cost of real estate paid for by Geo. C. Kimball, individually:

Steam pile-driver		4,500 00
Derrick car		1,850 00
Two locomotives, cylinders 17 x 24		12,300 00
Screw-cutting lathe, 12 ft. bed, 24 in. swing		586 00
One iron planer		775 00
One drill press		271 25
One bolt cutter		310 25
Real estate:		
Lot No. 105, city of Attica, for stock-yards		615 75
Lot No. 104 " " for turn-table		603 00
Lot No. 82, fronting on Union St.	For pass. & f't depots, &c.	400 00
Lots Nos. 62 & 79, in the city of Attica, Indiana		1,450 00

Repairs:	
Rep'rs [of] bridge over Wabash river at Attica	1,000 00
Under-crossing with Wabash, St. L. & Pa'c R'y	8,500 00
1,000 tons steel rail, bolts, and splices	35,000 00
Total	$77,161 25

193*c* Comes now George C. Kimball, receiver of said railway company, and submits to the court sheet No. 1, attached hereto, showing the approximate amount of indebtedness incurred by him in the operation and permanent and necessary improvement of the property of his trust up to this date, Aug. 15th, 1885, amounting to $48,540.85.

And he further shows to the court by sheet No. 2, filed herewith, the approximate cost of tools, machinery, and repairs needed for the safe and economical management and working of the said railway and the actual cost of real estate purchased and paid for by him individually and necessary for the use of the company at Attica, amounting in all to the sum of $77,161.25.

Wherefore said receiver now asks the court for an order au-
193*d* thorizing and directing him to issue receiver's certificates for
the amount of indebtedness already incurred, viz., $48,540.85, and for authority to purchase for his said trust all the property, tools, and real estate, and to make the repairs mentioned in sheet No. 2, and to issue receiver's certificates therefor.

GEORGE C. KIMBALL,
Receiver.

193*e* And afterwards, to wit, at the same term of said court, on the same day, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

193*f* Now comes on to be heard the petition of the receiver, this day filed, in regard to issuing receiver's certificates for money borrowed and to be borrowed by said receiver for indebtedness already incurred and to be incurred; and it appearing to the court from the accounts of said receiver, filed with his petition, that there are considerable sums of money due for moneys advanced to said receiver on pay-rolls and materials, and for sums due on pay-rolls and for materials and supplies, and the said receiver having no funds with which to pay the same, and it appearing to the satisfaction of the court that said indebtedness ought to be paid:

Now, therefore, in view of the above points, and in pursuance of the prayer of the petition this day filed before me by the said receiver, George C. Kimball, heretofore appointed by this court
193*g* as receiver to control, manage, and operate the Chicago and
Great Southern Railway Company, the said receiver is hereby authorized and directed to pay said advances, and to borrow on the terms and rate of interest set out in the following form and debenture, not exceeding fifty thousand dollars, to be used in paying the above-mentioned indebtedness of the receiver and to issue to the

person or persons having already advanced, or who may advance such sums, or any part or parts thereof, certificates signed by him expressing the amounts so advanced and the terms upon which the same may be advanced, which certificates shall be known as "Series No. 2," and may be in form as follows, to wit:

Series No. 2.

No. ——. $——.

The Chicago and Great Southern Railway Company.
193*h* George C. Kimball, receiver.

OFFICE OF THE RECEIVER,
ATTICA, INDIANA, —— —, 1885.

One year after date, unless sooner paid, I, George C. Kimball, as receiver of the Chicago and Great Southern Railway Company, under and by virtue of authority vested in me by the circuit court of the United States for the district of Indiana, promise to pay —— or order — dollars, with interest at the rate of six per cent. per annum; this obligation to operate with such other debentures as have been or may be hereafter ordered by this court as a first lien on all the railroad of said company lying between Fair Oaks and Yeddo, in the State of Indiana, and its earnings, income, and profits, after deducting operating expenses, costs of needed repairs, and other expenses of the receivership, this obligation being one of a
193*i* series authorized to be issued by said order not exceeding
fifty thousand dollars.

—— ——, *Receiver.*

The indebtedness evidenced by said certificates and by the certificates issued under the order of April 29th, 1885, is hereby made a first and last lien on all of said railroad lying between Fair Oaks and Yeddo, in the State of Indiana, superior to all other claims whatsoever.

And it further appearing to the satisfaction of the court, from the petition of the receiver and the statement filed therewith, that for the safe and economical working, management, and improvement of the property of the trust a large amount of money should *should* be expended at once for tools, machinery, locomotives, pile driver, derrick-car, lathe, planer, drill-press, bolt-cutter, steel rails, bolts,
193*j* and splices, real estate at Attica, repairs to the bridge over the
Wabash river, and at the undercrossing of the Wabash, St. Louis & Pacific railway near Attica; and it appearing that the receiver has no money or income from the earnings of the road with which to meet the expenses thereof, now, therefore, in view of said facts and in pursuance of the prayer of said petition this day filed by the said receiver, George C. Kimball, appointed as aforesaid, the said receiver is hereby authorized and directed to borrow from time to time, as he may need to meet the indebtedness to be incurred as aforesaid in the terms and rate of interest set out in the following form and debenture, not exceeding eighty thousand dollars, and to issue to the person or persons advancing — sum, or any part or

193*k* parts thereof, certificates signed by him expressing the amounts
so advanced and the terms upon which the same may be advanced, which certificates shall be designated as "Series No. 3," and may be in form as follows, viz:

Series No. 3.

No. ——. $——.

The Chicago and Great Southern Railway Company. George C. Kimball, receiver.

OFFICE OF THE RECEIVER,
ATTICA, INDIANA, —— —, 1885.

One year after date, unless sooner paid, I, George C. Kimball, as receiver of the Chicago and Great Southern Railway Company, under and by virtue of authority vested in me by the circuit court of the United States for the district of Indiana, promise to pay —— or order — dollars, with interest at the rate of six per cent. per
annum, this obligation to operate, with such other debentures
193*l* as may be hereafter ordered by this court, as a lien paramount
to all other liens except such liens as may be *or may be* determined or declared by the court hereafter to be prior to the lien of the first mortgage and the deed of further assurances executed by the said company to secure the issue of two millions of dollars of its bonds on all the railroad of said company lying between Fair Oaks and Yeddo, in the State of Indiana, and its earnings, income, and profits, after deducting operating expenses, costs of needed repairs, and other expenses of the receivership, this obligation being one of a series authorized to be issued by said order not exceeding eighty thousand one hundred and sixty-one and $\frac{74}{100}$ dollars.

—— ——, *Receiver.*

This indebtedness condensed by said certificates is hereby
193*m* made a lien on all of said railroad lying between Fair Oaks
and Yeddo, in the State of Indiana, superior and paramount to all liens and claims whatsoever, except such as are or may be hereafter *be* determined or declared by the court to be prior to the lien of the mortgage and deed of further assurance executed by said company to secure the issue of $2,000,000 bonds of the company.

August 15th, 1885.

W. A. W.

194 And afterwards, to wit, at the May term of said court, on the 17th day of August, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

And now, this cause coming on to be heard upon the bill of complaint of said Henry H. Porter and the answer of the said Chicago and Great Southern Railway, and the *pro confesso* order as to John C. New, trustee, and also upon the proofs and exhibits in the cause, and all the parties to this suit being present and before the court, and the said cause having been fully argued, and the court being fully advised, doth now find that the matters and things in said bill of complaint alleged are true, and that the equity of the cause is with the complainant, Henry H. Porter.

And the court finds that there is due to the said Henry H. Porter on the interest coupon falling due July 1, 1882, the sum of $36,000, together with interest from that date to July 1st, 1885, amounting to $6,480, making the total amount due as aforesaid on said coupon $42,480.

And the court finds that there is due to the said Henry H. Porter on the interest coupon falling due January 1st, 1883, the sum of $36,000, together with interest from that date to July 1st, 1885, amounting to $5,400, making the total amount due as aforesaid on said coupon $41,400.

And the court finds that there is due to the said Henry H. Porter on the interest coupon falling due July 1st, 1883, the sum of $36,000,
together with interest from that date to July 1st, 1885, amount-
195 ing to $4,320, making the total amount due as aforesaid on
said coupon $40,320.

And the court further finds that there is due to the said Henry H. Porter on the interest coupon falling due January 1st, 1884, the sum of $36,000, together with interest from that date to July 1st, 1885, amounting to $3,240, making the total amount due as aforesaid on said coupon $39,240.

And the court further finds that there is due to the said Henry H. Porter on the interest coupon falling due July 1st, 1884, the sum of $36,000, together with interest from that date to July 1st, 1885, amounting to $2,160, making the total amount due as aforesaid on said coupon $38,160.

And the court finds that there is due the said Henry H. Porter on the interest coupon falling due January 1st, 1885, the sum of $36,000, together with interest from that date to July 1st, 1885, amounting to $1,080, making the total amount due as aforesaid on said coupon $37,080.

And the court finds that there is due to the said Henry H. Porter on the interest coupon falling due July 1st, 1885, the sum of $36,000, making the total amount due on said coupons $274,680, with interest thereon at six per cent. per annum from the said first day of July, 1885.

And the court further finds that there is due to the said complainant, Henry H. Porter, from said defendant on the first day of July, 1885, for the principal sum of said bonds the sum of $1,200,000,
together with interest thereon at six per cent. from said date,
196 making total amount of principal and coupons, with interest
thereon, due on the first day of July, 1885, of $1,474,680,
making the total amount due the said complainant, Porter, $1,474,680, together with interest at six per cent. thereon from said first day of July, 1885, which the said complainant is entitled to recover from the said defendant railway company upon the bonds and coupons mentioned in said bill of complaint and secured by the two deeds of trust executed to John C. New as trustee.

It is therefore ordered, adjudged, and decreed in this cause as follows:

First. That within five days from this date the defendant, The Chicago and Great Southern Railway Company, do pay into this court for the use of said complainant, Henry H. Porter, the said sum of $1,474,680, with interest from July 1st, 1885, at the rate of six per cent. per annum, and also that said defendant do pay the costs and charges of the complainant in and about this suit in this behalf laid out and expended.

Second. That the equity of redemption of the defendants and all persons claiming by, through, or under them, or either of them, in, to, and over the said mortgaged property and premises, to wit, all and singular the line of the railway of the said defendant corporation, The Chicago and Great Southern Railway Company, constructed or to be constructed, from Fair Oaks, in Jasper county, extending through the counties of Newton, Jasper, Benton, Warren, Fountain, and Clay, to
the city of Brazil, in said county of Clay, all being in the
197 State of Indiana, together with all the lands, tenements, and
hereditaments acquired or appropriated for the purpose of a right of way of said railway, including all side tracks and rights of way for the same, and also all depots and station grounds, and all depots, engine-houses, car-houses, station-houses, warehouses, machine-shops, car-shops, workshops, freight-houses, grain-houses, and elevators and other erections and superstructures, all machinery, tools, and implements held or acquired for use in connection with said railway, and also all locomotives, tenders, cars, and other rolling-stock and equipment, rails, bridges, ways, piers, carriages, chairs, spikes, wheels, axles, ties, and all fuel and other stores and supplies belonging to, or that may from time to time belong to, or be provided for use upon or in connection with said railroad, with all and singular the appurtenances, and the rents, and incomes, and profits of the same, and all the franchises and other rights of the said railway company pertaining to the said railway be, and the same is hereby, barred and forever foreclosed.

Third. The said corporate property, to wit, said railway, with its franchises, estate, property, and effects of every nature, as set forth and described in said deeds of trust, be sold at the city of Indianapolis, in the State of Indiana, upon due notice given of the time, place, and terms of such sale by advertisements to be published not less than three times a week for six successive weeks in a news-
paper published in the city of New York, also in a newspaper
198 published in the city of Chicago, State of Illinois, and also in
a newspaper published in the city of Indianapolis, State of Indiana, and William P. Fishback is hereby appointed master in chancery, and as such empowered to execute this decree according to the terms thereof, and is required to make prompt report and payment of all moneys derived from such sale into this court immediately after the execution of this decree.

Fourth. Such sale shall be for cash, and no bid shall be received for less than three hundred thousand dollars, one hundred thousand of which shall be paid at the time of sale, and the balance to be paid into court upon confirmation of the sale, unless the court shall at that time otherwise order.

Fifth. Upon the report of the sale of the property, franchises, rights, and interests described in said trust deeds, the master is required to make forthwith after such sale, and upon full compliance with the terms of such sale by the purchaser, and the approval by this court, the purchaser will be entitled to a deed conveying to him absolutely the said mortgaged railway, rights, property, franchises, interests, and effects, real and personal, as fully as the same are now held and owned by the said defendant corporation.

Sixth. All questions of distribution necessary to be considered in this cause, and all allowances proper to be made, as well as all other questions not disposed of by this decree, are reserved
199 for the future action of this court—

It being hereby intended and ordered that the property be sold free from all demands, liens, and incumbrances whatsoever, and that the fund arising from the sale be brought into court subject to the rights of all parties, or all who may be made parties, as their respective rights shall hereafter be determined, and nothing in this decree shall in any way preclude any claimant from asserting his right in and to the fund arising from such sale.

And, in behalf of all parties and applicants to be made parties, Harris and Calkins, as solicitors, except to said decree and each part thereof, and are allowed thirty days to file specific statement of exceptions and grounds therefor with the same effect as if filed now.

And afterwards, to wit, at the May term of said court, on the 7th day of September, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the creditors and stockholders, by Harris & Calkins, their solicitors, and file their exceptions to the decree herein, subject to motion to modify, and said exceptions are in the words following, to wit:

200 Be it remembered that on the 17th day of August, in the year 1885, the said complainant, by R. B. F. Peirce, Esq., his solicitor, appeared before the undersigned, district judge of the United States for the district of Indiana, acting as circuit judge in chambers, and asked for the entry of a decree in the said above-entitled —, and then and there submitted the draft of a decree, which he asked to be entered; and also at the same time W. H. Calkins, Esq., solicitor for certain *for certain* of the stockholders and creditors of said defendants corporation, appeared in answer to a request made by the said R. B. F. Peirce, and then and there resisted the request made to have a decree entered upon the following grounds—that is to say:

1. That no notice had been given him or the other solicitors appearing for the same and other creditors of the intention of the said Peirce to submit said motion, and that the request made by the said Peirce of the said Calkins to be present at that time had been

given only about two hours before that time, during which time the noon intermission occurred.

2. That no other notice had been given to the said Calkins
201 or to any of the other solicitors appearing for the defendants to said bill of the said Porter of the intention of the said Porter to submit a request to enter a decree in said suit at said time.

3. That the said W. H. Calkins, as solicitor of some of said creditors and some of the stockholders of said defendant corporation, then and there protested against the entry of any decree at that time, because the issues tendered by the answers of said stockholders and creditors in their answers then and theretofore filed, and upon the cross-bill theretofore filed by some of the creditors of said defendant corporation, had not been replied to, nor the cross-bill answered unto, and no issue had been joined upon the facts so pleaded by said cross-bill and answers, and that no evidence had been taken, and that no order of reference had been made, and the cause was not then ripe for decree.

4. And because the court had no authority or jurisdiction under the practice in said court to enter a decree in said cause foreclosing the mortgage in suit against the defendants thereto appearing and resisting the same, or any of them, before the issues were
202 closed and evidence heard touching the issues, and such proceedings *was* without authority of law and void. Yet, nevertheless, over these objections and the general objection and protestation then and there made by the said W. H. Calkins, Esq., there being no other solicitor present representing any of the defendants or having notice thereof, and there being no defendant present or having notice thereof, and no solicitor representing the Chicago & Great Southern Railway Company, defendant, the court did entertain the motion of the complainant's solicitors to receive the decree by him tendered, and ordered the same to be entered of record as a judgment in said court and cause, and gave thirty days' time unto the defendants to tender and file exceptions in writing to the said decree, which is now done within said time, and is signed and sealed by the Honorable William A. Woods, then and now sitting as judge of the circuit court of said district in the absence of the circuit judge, and the same is ordered to be filed and made a part of the record.

203 And afterwards, to wit, at the May term of said court, on the 21st day of September, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings were had in the above-entitled cause, to wit:

Come now Baker, Hord & Hendricks, solicitors, and upon their motion the petition of the Union Rolling Stock Company, Bristol & South Wales Railway Wagon Company, and William A. Adams, and the petition of the Pittsburg Bessemer Steel Company (Limited) are hereby referred to William P. Fishback, Esq., master in chancery to take the evidence and report the same, together with his finding thereon, to this court with all convenient speed.

paid into court upon confirmation of the sale, unless the court shall at that time otherwise order.

Fifth. Upon the report of the sale of the property, franchises, rights, and interests described in said trust deeds, the master is required to make forthwith after such sale, and upon full compliance with the terms of such sale by the purchaser, and the approval by this court, the purchaser will be entitled to a deed conveying to him absolutely the said mortgaged railway, rights, property, franchises, interests, and effects, real and personal, as fully as the same are now held and owned by the said defendant corporation.

Sixth. All questions of distribution necessary to be considered in this cause, and all allowances proper to be made, as well as all other questions not disposed of by this decree, are reserved
199 for the future action of this court—

It being hereby intended and ordered that the property be sold free from all demands, liens, and incumbrances whatsoever, and that the fund arising from the sale be brought into court subject to the rights of all parties, or all who may be made parties, as their respective rights shall hereafter be determined, and nothing in this decree shall in any way preclude any claimant from asserting his right in and to the fund arising from such sale.

And, in behalf of all parties and applicants to be made parties, Harris and Calkins, as solicitors, except to said decree and each part thereof, and are allowed thirty days to file specific statement of exceptions and grounds therefor with the same effect as if filed now.

And afterwards, to wit, at the May term of said court, on the 7th day of September, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the creditors and stockholders, by Harris & Calkins, their solicitors, and file their exceptions to the decree herein, subject to motion to modify, and said exceptions are in the words following, to wit:

200 Be it remembered that on the 17th day of August, in the year 1885, the said complainant, by R. B. F. Peirce, Esq., his solicitor, appeared before the undersigned, district judge of the United States for the district of Indiana, acting as circuit judge in chambers, and asked for the entry of a decree in the said above-entitled —, and then and there submitted the draft of a decree, which he asked to be entered; and also at the same time W. H. Calkins, Esq., solicitor for certain *for certain* of the stockholders and creditors of said defendants corporation, appeared in answer to a request made by the said R. B. F. Peirce, and then and there resisted the request made to have a decree entered upon the following grounds—that is to say:

1. That no notice had been given him or the other solicitors appearing for the same and other creditors of the intention of the said Peirce to submit said motion, and that the request made by the said Peirce of the said Calkins to be present at that time had been

given only about two hours before that time, during which time the noon intermission occurred.

2. That no other notice had been given to the said Calkins
201 or to any of the other solicitors appearing for the defendants to said bill of the said Porter of the intention of the said Porter to submit a request to enter a decree in said suit at said time.

3. That the said W. H. Calkins, as solicitor of some of said creditors and some of the stockholders of said defendant corporation, then and there protested against the entry of any decree at that time, because the issues tendered by the answers of said stockholders and creditors in their answers then and theretofore filed, and upon the cross-bill theretofore filed by some of the creditors of said defendant corporation, had not been replied to, nor the cross-bill answered unto, and no issue had been joined upon the facts so pleaded by said cross-bill and answers, and that no evidence had been taken, and that no order of reference had been made, and the cause was not then ripe for decree.

4. And because the court had no authority or jurisdiction under the practice in said court to enter a decree in said cause foreclosing the mortgage in suit against the defendants thereto appearing and resisting the same, or any of them, before the issues were
202 closed and evidence heard touching the issues, and such proceedings *was* without authority of law and void. Yet, nevertheless, over these objections and the general objection and protestation then and there made by the said W. H. Calkins, Esq., there being no other solicitor present representing any of the defendants or having notice thereof, and there being no defendant present or having notice thereof, and no solicitor representing the Chicago & Great Southern Railway Company, defendant, the court did entertain the motion of the complainant's solicitors to receive the decree by him tendered, and ordered the same to be entered of record as a judgment in said court and cause, and gave thirty days' time unto the defendants to tender and file exceptions in writing to the said decree, which is now done within said time, and is signed and sealed by the Honorable William A. Woods, then and now sitting as judge of the circuit court of said district in the absence of the circuit judge, and the same is ordered to be filed and made a part of the record.

203 And afterwards, to wit, at the May term of said court, on the 21st day of September, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings were had in the above-entitled cause, to wit:

Come now Baker, Hord & Hendricks, solicitors, and upon their motion the petition of the Union Rolling Stock Company, Bristol & South Wales Railway Wagon Company, and William A. Adams, and the petition of the Pittsburg Bessemer Steel Company (Limited) are hereby referred to William P. Fishback, Esq., master in chancery to take the evidence and report the same, together with his finding thereon, to this court with all convenient speed.

And afterwards, to wit, at the May term of said court, on the 30th day of September, 1885, before the Honorable Walter Q. Gresham and the Honorable William A. Woods, judges as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now Cephas Atkinson and John Swan, petitioners, and file their petition, and offer to file their sworn answer, and ask to be made parties defendant to this suit; and the court, being fully advised in the premises, on the order of the circuit judge, the district judge dissenting, the said Swan and Atkinson are admitted as defendants, and now file their answer.

This order shall in nowise affect the decree heretofore made for the sale of the railroad by the court or rights of parties thereunder.

204 The answer heretofore filed by Messrs. Harris & Calkins and others, as solicitors for the Smith Bridge Company, on August 4th, 1885, is by leave of court withdrawn, so far as it affects the said Smith Bridge Company, but the pleading shall remain on file as an exhibit to other answers filed by said solicitors.

And the answer of said Atkinson and Swan, filed as above, is in the words following, to wit:

205 To the judges of the circuit court of the United States:

Your petitioner-, John W. Swan and Cephas A. Akison, show unto your honors that they are tax-payers of Union and Oak Grove townships, Benton county, Indiana; that as such tax-payers they have an interest in the subject-matter of the above-entitled suit, as fully shown and set out in the accompanying answer; they hereby refer to the statement in said answer contained, and ask that they and all of them be considered in connection with this petition as if again recited herein, and that for the reasons therein recited they be admitted as parties defendant hereto, to defend the said railway company and the interests of its *bona fide* stockholders.

CEPHAS ATKISON.
JOHN W. SWAN.

STRAIGHT, WILEY & CARTER,
HARRIS & CALKINS,
Solicitors.

206 These defendants, now and at all times saving and reserving to themselves all and all manner of benefit and advantage of exceptions to the many errors, uncertainties, and imperfections in the said bill of complaint contained, for answer thereunto, or unto so much thereof as these defendants are advised is material and necessary for them to answer unto, answer and say:

That is to say the said John W. Swan is a resident and tax-payer of Union township, in Benton county, Indiana, and has been for ten years last past; that on the — day of May, 1880, the said township, under and in pursuance of the laws of this State, at an election then and there held, voted aid to the Indiana and Chicago Railroad Company, which afterwards became the Chicago and Great Southern

Railway Company, his co-defendant herein, to a large amount, to
wit, the sum of about $8,000.00
207 That afterwards the board of commissioners of said county,
at the time the money was paid to the railway company, sub-
scribed to its capital stock in the full amount thus voted by said
tax-payers of said township; that of the aggregate sum so paid by
said township the said defendant Swan paid the sum of $194.80;
and the said Cephas Atkison says that he is a resident and tax-payer
of Oak Grove township, Benton county, Indiana, and has been for
ten years last past; that on the — day of May, 1880, the tax-payers
and voters of that township voted aid to the said defendant railway
company in the name of the Indiana and Chicago Railroad Com-
pany, which afterwards became the Chicago and Great Southern, in
a large sum of money, to wit, about $15,000.00; that afterwards the
board of county commissioners of said county, at the time
208 said sum of money was paid to said railway company, sub-
scribed the full amount of such aid voted to the capital stock
of said railway corporation; that of the said aggregate amount so
voted and paid the defendant Atkison paid the sum of $670.27; and
the said defendants say that the number of tax-payers in said town-
ships contributing to said fund are so numerous that it would need-
lessly encumber the record to insert herein their names, with the
respective amounts by them paid; but they will lay before the court
the list and amounts paid as soon as the same can be made out, and
upon the trial of this cause will make proof thereof.

And they further say that two other adjoining townships in Newton
county likewise voted aid to said railroad, and the tax-payers
209 paid in large sums of money, which entitles the said tax-
payers and all of them to paid-up stock in the railroad to
the full amount of money paid by each of them. The whole amount
voted in all four of the townships aggregates about the sum of
$52,000. These defendants, at the proper time, will make proof of
the names and amount paid by the tax-payers of said townships.

These defendants further say that they file this answer on behalf
of themselves and all others similarly situated and who desire to
come in under the decree in this case, and they ask that their an-
swer herein may be taken as representing the interest of all of said
tax-payers to the full amount in the aggregate paid by them, to wit,
$52,000.

210 And these defendants further say that at the time of the
payment of railroad tax aforesaid the treasurer issued to them
receipts therefor, but that he failed to issue to them such special re-
ceipts as the law provided and required, and on the 3rd day of Au-
gust, in the year 1885, they took from the treasurer of Benton county
special receipts which are authorized by the laws of this State, show-
ing the amount of railroad tax having been paid by them, and on
said day presented said receipts to one Chas. W. Hillard, who is the
treasurer of said Chicago and Great Southern Railway Com-
211 pany (the president or secretary, or either of them, could — be
found), and demanded of him that he issue to them a certifi-
cate of shares of capital stock in said railway company to the full

amount of the money so paid by them, less the odd sum over and above the amount which might be evenly divided by the sum of fifty, and thereupon exhibited to him the said special receipts issued to them as aforesaid; but the said Hillard wholly failed and refused to issue to them the said certificates of stock, or any of them.

And the defendants say that under the law of this State they were entitled to have and receive of said company the said shares of stock aforesaid, and that the other tax-payers are likewise entitled to have and receive from said company the shares of capital stock
212 in said company to the full amount of $52,000, par value.
But these defendants aver that they believe it would be useless for any of the said tax-payers to demand the said stock, as they believe the railway company would refuse to deliver it, as they did to these defendants.

And the defendants further say that on the 8th day of March, in the year 1880, a railroad company was incorporated under the laws of this State by the name of the Indiana and Chicago Railroad Company; that it ran through Jasper, Benton, Warren, Fountain, Parke, and Clay counties of this State; that the purpose of its promoters was to reach the coal-fields of Indiana and provide an outlet therefrom to the city of Chicago and other points.

213 That afterwards, to wit, on the 14th day of July, 1881, the name of the company was changed, in pursuance of the laws of this State, to the Chicago and Great Southern Railway Company, one of the defendants herein; that prior to the 18th day of March, 1882, but few shares of the capital stock of said corporation had been issued, and one Henry Crawford had become the holder and owner of a majority thereof, and controlled the board of directory as well as all of its business relations.

That on the — day of ——, 1882, he elected the following persons directors of said company, to wit: William A. Starin, Henry Crawford, Jun., D. J. Lyon, C. L. Worden, D. H. Conklin, Fred. F. Lacy, and J. W. McDonald, they constituting seven of the nine directors authorized by the said company to form its board. All of the persons named were his friends, kindred, employés, and servants,
214 and constituted a ruling majority in all of the meetings of the said board. They were all subject to his personal control and domination, so far as their official actions as directors were concerned, and were elected and qualified under the promise and agreement to carry out the wishes of the said Henry Crawford in and about the premises. After the election of the directory as aforesaid Henry Crawford caused his employé and servant, William A. Starin, to be elected president of the board, and his son, Henry Crawford, Jr., secretary, and a part of the time treasurer thereof. They were all retained as directors in the company until the issuance of the stock and bonds hereinafter mentioned in the bill of the said Porter.

On the 18th of March, 1882, no work had been done upon said line of railroad of any value, and no stock had been subscribed and paid for, except a few shares held by said Henry Crawford
215 for the purpose of managing and controlling the corporation, as hereinbefore set out, and the stock held by him was in effect

not paid for, and was held simply for the purpose of enabling him to dominate and control the operations of the corporation.

That on the 18th day of March, 1882, said Henry Crawford, then a stockholder—and the chief stockholder of said corporation—and thereby dominating and controlling it, with the board of directors organized as aforesaid, all of whom he controlled, prepared and caused said railway company, through its directors, to enter into a construction contract with him, whereby he caused the company to agree that he should build the railroad as the contractor from Fair Oaks, in the county of Jasper, to Brazil, in Clay county, in the State of Indiana.

216 By the terms of said contract said Crawford proposed to procure for the company the right of way, grade, bridge, tie, and iron the railroad with iron or steel rails, and supply and construct proper turn-outs, switches, cattle-guards and the like, and erect all necessary shops, water-tanks, tool-houses, turn-tables, stock-pens and the like necessary to equip said line for operation, and also to furnish a sufficient number of engines and cars and other rolling-stock to enable the company to transact business such as is usually placed upon railroads similarly situated and doing a like business, said business contemplated being that of a large carrier of coal and produce, as well as passenger carrier; also to construct a telegraph line along said railroad and establish and supply proper stations and telegraph offices sufficient for the safe and efficient operation of the railroad. In consideration whereof 217 he caused the company by said contract to agree to pay him therefor all donations, voted aid, right of way, land, labor, material, and money that had been or might thereafter be acquired by the company.

Also to pay him two million dollars of the full-paid-up non-assessible shares of the capital stock of the company, that being the entire amount of its authorized shares of stock; also to pay him two million dollars of its first-mortgage six per cent. gold bonds; also to pay him two million dollars of its income bonds, that being the entire amount authorized to be issued upon its property.

The bonds were to be secured by a trust deed or morfgage and the defendant here was to be the trustee, all in the form usual in the creation of railroad securities. A copy of the contract is filed 218 herewith, marked Exhibit "B," for the information of the court.

And said Crawford further caused the said railway company to agree with him that he should have the possession and control of the railway company during its construction and receive all the income and earnings of every kind arising therefrom until he should turn it over. In order that he might raise money to be used in its construction, he caused the company to contract with him that it should, on his demand and for his accommodation, execute and deliver to him its promissory notes and acceptances, which he might use in negotiating loans, or he might use the credit of the road in purchasing material, labor, equipments, or whatever he might think necessary. After the contract was made and the con-

struction of the railroad was begun a large part of the
219 material, supplies, and labor in the building and construction
of the railroad *was* obtained in the name and upon the credit
of the railroad company. The only part of the railroad ever constructed
was that portion lying between Fair Oaks, in Jasper county,
and Attica, in Fountain county, a distance of about sixty miles.

The defendants show to the court that the railroad was not built
in accordance with the terms and provisions of the contract. The
material used in its construction was inferior; the work was slighted;
the rails were iron; there was less than three miles of sidings constructed;
there were but few buildings constructed, and they were
poorly built; in short, the honest and reasonable cost and expense
220 in constructing the line between Fair Oaks and Attica,
exclusive of the bridges over Big Pine creek and the Wabash
river, did not exceed the sum of five thousand dollars per mile, and
it is not worth to exceed that sum; that in the construction of the
railroad by Crawford it became indebted for labor, materials, and
supplies, and for work done in operating it, in a large amount, exceeding
in the aggregate $150,000, which indebtedness Crawford
refuses to pay, and it is still unpaid; that said Crawford received in
cash from the tax-payers of Union, Iroquois, Oak Grove, and —
townships the sum of about $52,000 as taxes or voted aid by said
tax-payers of said townships to said railroad company.

221 The defendant further shows that at the time of making
the contract with said Crawford there was a railroad constructed
from Attica southward to Yeddo, but that it was of little
value; that the said Crawford had or could obtain the control of it
for a mere nominal consideration; that at the time of procuring the
contract with the company, in anticipation thereof, he caused it to
be agreed in the contract aforesaid that if he procured the railroad
known as the Chicago Block Coal railroad to be consolidated into
the Chicago and Great Southern Railway Company that he should
have therefor the same amount of stock and bonds per mile
222 as provided for in the construction contract aforesaid; that
in the month of March, 1882, he procured such consolidation
with said Chicago and Block Coal Railroad Company, extending
from Yeddo, in Fountain county, to Attica, a distance of about
twenty miles.

On April 9th, 1883, he caused the defendant railway company to
execute a supplemental deed of trust upon that portion of the property,
being Exhibit "B" in the plaintiff's declaration; that said
Crawford did no work between Yeddo and Brazil, but wholly abandoned
the work. The line of railroad between Yeddo and Attica
at the time of the consolidation was old, inferior, incomplete, and
of very little value as a railroad property.

223 After the abandonment of the work, to wit, on the 18th
day of February, 1884, said Crawford caused a meeting of
the board of directors of the defendant railway company to be held
in the city of Chicago for the purpose of receiving the report of him,
the said Crawford, concerning the work he had done under his said
contract; that at said meeting there was not a quorum of the board

of directors present, and all that were present were his kinsmen, servants, employés, and especial friends, and that thereupon, without authority of law, he caused said board to assume to elect another friend and employé, one Elisha Moore, Jr., a director, to fill out a quorum. At the time of said election said Moore had no in-
224 terest in said railway company, and owned no stock therein.
The said Moore, being then present, at the instance and request of said Crawford, assumed to and did act and participate in the meeting and voted on all questions arising as if he were a mere legal director; that no quorum of legal directors was present, and that it took his presence to make out a quorum. Thereupon said board, being illegally organized, as said Crawford well knew, received the report which he, said Crawford, then and there made respecting the performance of his contract with said railway company, but which report is unknown to the defendants, and, therefore, cannot be here stated. They ask that the said railroad com-
225 pany be required to exhibit it, and also to exhibit the books wherein are written the proceedings which took place at said meeting, and immediately thereafter.

And the defendants say that if a true report of the work done and of all the facts as they then existed had been made and honestly acted upon said Crawford would not have been entitled to receive any portion of the alleged compensation for the construction of the said railroad; that if a fair and honest report hade been made as the facts were and now are it would have appeared that the entire line constructed by the said Crawford had not cost him more than $300,000, and the outstanding indebtedness then and there existing exceeded the sum of $150,000, which would only leave about the sum of $150,000 which the said Crawford had then and there expended in and about the work in constructing said railroad;
226 that he had received a large amount of donations and the like along the line of the railroad, which would still reduce the amount of money which he had put therein.

And the defendant further shows that at said meeting of the board of directors, illegally organized, as before stated, the said Crawford caused and procured it to issue and deliver to him *of* all [of] said bonds now in suit and also a large amount of the capital stock of the company, believed to be about $1,300,000, and income bonds believed to aggregate a similar sum; and the defendants charge that all of said acts and the issuance and delivery of said bonds and the issuance and delivery of said stock was illegal and void.

After said Crawford had procured said bonds and stock he delivered them to Drexel, Morgan and Co., bankers, in New York,
227 by way of pledge for an individual loan of money made by them to him for about the sum of $350,000; but the defendants aver that said Drexel, Morgan and Co had notice and knowledge of all the facts aforesaid and of the illegality of the issue of said bonds and the illegality of the construction contract of the said Crawford.

Afterwards, and before the commencement of this suit, the complainant, Henry H. Porter, formed a syndicate or association for the purpose of getting control of the Chicago and Great Southern railway and of extending it from Yeddo southward across the Indiana coal-fields to the Ohio river.

Thereupon an arrangement was made by and between said Porter and said Crawford by which the stock and bonds theretofore delivered to Drexel, Morgan and Co. in pledge were taken up and
228 the said bonds and stock were repledged by the said Crawford
to the said Porter for the advancements by the said Porter and his friends to Drexel, Morgan and Co. of the amount of money which they had advanced to said Crawford, aggregating the sum of about $400,000.

As a further part of said arrangement between said Porter, Crawford, and their associates it was agreed that Porter should file a bill foreclosing said mortgage on account of said bonds against all persons having or asserting any claim or lien against the property of the railroad company, and extinguish the same and organize a new corporation, to whom the property after such foreclosure proceedings and sale should be conveyed.

It was further agreed between the said Crawford and Porter
229 and his associates that said Porter should not advance not
to exceed $500,000, including the sum advanced to Drexel, Morgan and Co.; that the said Crawford should have the benefit of the difference between the amount Porter and his friend paid to Drexel, Morgan and Co. and said $500,000, but in no event was Crawford to receive more than $250,000; that the sum the said Crawford was to receive depended somewhat upon the amount which it cost to extinguish the debts and liabilities of the said railroad in this foreclosure proceeding.

It was further arranged and agreed that another railroad company should be organized extending from Yeddo southward to the Ohio river, which should be consolidated with the defendant, Chicago and Great Southern Railway Company. The profits arising therefrom and from the completed road should be divided
230 between the said Porter, Crawford, and their associates.

In pursuance of said arrangement and understanding on the 9th day of May, 1885, said Porter and his associates did incorporate under the laws of Indiana a railroad from Yeddo through Brazil to the Ohio river with a capital stock of $100,000, of which sum Porter subscribed $95,000, and the rest was taken by said Crawford and his friends, all in pursuance of the arrangements aforesaid.

Defendants show that the said Porter and his associates, whose names will be given hereafter, each and all of them knew before and at the time of entering into the arrangement and before advancing any money all the facts hereinbefore stated concerning the illegal construction contract with said Crawford, the ille-
231 gality of the issuance of the said stock and bonds, and of all
the other illegal acts hereinbefore more specifically set out.

The defendants show unto your honors that the construction contract made or pretended to be made between the said Crawford and the said railroad company is fra-dulent and void at the election of

the stockholders or creditors of the said company; that the board
of directors of the railway company were, and still are, under the
control and domination of said Crawford and the said Porter, and
the said railway company refuses to make any defence to this action,
but, on the contrary, have caused or permitted an attorney-at-law,
who has long been and now is the counsellor and adviser of the
said Porter, to file an answer on behalf of the corporation,
232 confessing each and every allegation in the complaint set
out, thereby seeking to cut off and prevent the court from
being advised of the facts hereinbefore set out, and to carry out
and consummate the inequitable and unlawful purpose of said combination and conspiracy.

And the defendants say if they are permitted to do so it will defeat the rights of the creditors of the said railway company and destroy the rights of the *bona-fide* owners of the shares of stock of said company.

And defendants show to your honors that the persons who are associated with the said Porter in the scheme heretofore set out in this answer, and who contributed or agreed to contribute to the raising of the money to take said bonds out of pledge, are as follows, with the sums agreed to be paid by each set opposite their names, to wit:

233	Henry Seibert	$50,000
	David Dows	25,000
	J. M. Durant	25,000
	A. J. Leith	25,000
	Robert Law	25,000
	Isaac H. Wing	15,000
	C. W. Winder	5,000
	C. H. Lawrence	5,000

and the remainder by said Porter or said Porter and Crawford.

The defendants further show that the said Porter is not the trustee of his associates in any sense which authorizes him to sue in his own name herein, and they ask that said Porter be required to disclose whether the names above given are his associates or the names of any other persons asssociated with him, to the end that they may be made parties hereto.

The defendants further say that the said Porter asserts in this
234 court that the issuance of the said bonds was lawful; that the
property of the railway company is an inadequate security for
said debt; that the corporation is insolvent; that the mortgage and
bonds are a first lien upon the property of the company; that said
John C. New refuses to maintain any action or take any steps to the
enforcement of the said bonds and the protection of the said property.

Whereas the truth is, the issuance of said bonds was illegal and without consideration.

The mortgages are fraudulent, and are therefore null and void; that said New refuses to act at the instance and request of the said Porter and his associates, or some of them, for the sole purpose of enabling Porter to bring and remove this action into this honorable court.

235 When the road is completed, if it ever should be, to Brazil and beyond, affording an outlet from the Indiana coal-fields, it will be a valuable railroad property.

That if an accounting is had of the sum actually expended by said Crawford and of the other indebtedness outstanding for labor, supplies, and the like, it will be found that the property is of vastly greater value than the sum of such indebtedness.

And the defendants ask that the matters and things herein alleged be considered, to the end that the bonds and mortgage claim- by the said Porter be annulled and set aside, and that the stock of these defendants be protected; and these defendants deny all and all manner of unlawful combination or confederacy wherewith they are by the said bill of complaint charged, without *that*, that any other 236 matter or thing in the said bill of complaint material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true.

All of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable cost and charges in this behalf most wrongfully sustained.

JOHN W. SWAN.
CEPHAS ATKISON.
JOHN S. COOPER.

STRAIGHT, WILEY & CARTER,
HARRIS & CALKINS,
Solicitors.

237 STATE OF INDIANA, }
Benton County, } *ss:*

Cephas Atkison, being duly sworn, on his oath says that he has heard read the foregoing answer and is fully informed of the matters and things therein stated; that the matters therein stated on information are true as he is informed and believes; the matters therein stated of his own knowledge are true.

CEPHAS ATKISON.

Subscribed and sworn to before me this August 4th, 1885.

D. E. STRAIGHT,
Notary Public.

And afterwards, to wit, at the May term of said court, on the 2nd day of October, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now Crerar, Adams & Co., by Lyman & Jackson, their solicitors, and file their claim herein, in the words following, to wit:

238 In the Matter of the CHICAGO & GREAT SOUTHERN RAILROAD COMPANY. George C. Kimble, receiver.

Claim of John Crerar, John McGregor Adams, and E. S. Shepherd, copartners under the firm name and style of Crerar, Adams & Co.

STATE OF ILLINOIS, } ss:
Cook County, }

Edward S. Shepherd, being first duly sworn, deposes and says that he is a member of the firm of Crerar, Adams & Company, and that the Chicago and Great Southern Railroad Company are indebted to the said firm of Crerar, Adams & Co. in the sum of seven thousand eight hundred and nine dollars and ninety-four cents ($7,809.94) for merchandise sold and delivered by said firm of Crerar, Adams & Co. to the said Chicago and Great Southern Railroad Company at the special instance and request of the said Chicago and Great Southern Railroad Company, and that the annexed statement of said indebtedness is true and correct.

EDWARD S. SHEPHERD.

239 Subscribed and sworn to before me this 16th day of June, 1885.

[SEAL.]

LYNN T. SPRAGUE,
Notary Public.

CHICAGO, *Oct.* 31, 1884.

Chicago & Great Southern R. R. Co. to Crerar, Adams & Co., Dr.

Railway supplies, 11 & 13 Fifth avenue. Terms, net cash. Accounts not settled by the 15- of the month subject to sight draft.

1883.				
Jan'y	12.	To merchandise	50	00
	24.		4	35
	31.		62	83
Feb'y	21.		35	48
M'ch	5.		15	85
Ap'l	3.		10	70
	6.		111	60
	10.		23	88
	12.		46	50
	27.		5	81
May	11.		27	
	16.		72	13
	"		32	52
	"		1	64
	11.		21	95
	21.		74	

May	24.	To merchandise	9	75
	25.		5	18
	29.		15	
	30.		21	40

240

1883.

June	7.	To merchandise	85	21
	"		2	20
	28.		4	60
July	2.		11	23
	3.		18	10
	11.		21	
	12.		138	92
	"		11	45
	17.		45	49
	18.		1	16
	19.		43	98
	23.			31
	26.		11	37
	30.		9	
Aug.	3.		77	15
	8.		31	35
	"		10	
	10.		12	65
	18.		67	25
	"		65	89
	21.		460	
	22.		21	67
	27.		28	31
	"		2	25
	28.		9	01
	29.		8	25
	30.		5	08
	"		609	
Sept.	3.		38	31
	"		2	25
	5.		12	08

241

1883.

Sept.	7.	To merchandise	52	
	10.		19	
	13.			25
	19.		4	17
	24.		1	75
	"		37	36
	"			60
	28.		111	08
	29.		9	50
Oct.	2.		55	91
	8.		2	52

Oct.	10.	To merchandise	532	65
	11.		26	92
	13.		1	15
	22.		7	75
	23.		35	36
	26.		85	40
	31.		34	71
Nov.	3.		34	91
	5.		12	87
	6.		2	25
	"		3	66
	13.		138	60
	20.		28	22
	22.		7	93
Dec.	3.		2	90
	4.		21	59
	8.		8	35
	"		13	48
	10.		4	75
	"		9	

242

1883.				
Dec.	10.	To merchandise	15	59
	"		3	44
	13.		33	70
	17.		5	85
	18.		207	90
	26.		57	35
1884.				
Jan'y	2.		107	93
	4.		40	08
	11.		16	81
	16.		8	95
	24.		47	07
	26.		92	86
	29.		13	19
	"		802	25
Feb'y	8.		18	75
	"		48	25
	12.		14	10
	14.		190	92
	18.		53	05
	19.		2	50
	20.		29	25
	22.		13	38
	29.		3	35
Mar.	1.		9	24
	3.		17	50
	5.		42	75
	7.		267	67

Mar.	10.	To merchandise	21	00
	13.		21	25
	24.		172	66
	25.		54	65

243

1884.

April	3.	To merchandise	7	71
	5.		27	44
	11.		16	78
	18.		3	86
	"		54	54
	21.		55	58
	24.		47	26
	29.		10	95
May	5.		21	55
	12.		39	11
	14.		9	15
	23.		13	50
	26.		44	84
	"		13	65
	27.		10	
June	2.		72	80
	3.		93	12
	5.		130	
	9.		57	43
	12.		195	
	14.		13	34
	17.		7	50
	20.		85	38
	21.		14	76
	25.		74	20
	26.		0	35
	"		24	30
	27.		10	01
	30.		10	40
July	8.		38	
	10.		42	93

244

1884.

July	12.	To merchandise	9	75
	14.		2	
	18.		3	91
	"		8	73
	21.			50
	25.		11	94
	29.		38	15
	"		39	50
Aug.	6.		8	50
Sept.	15.		38	80
	17.		14	50

Sept.	24.	To merchandise	11 22	
"			24	
	29.		3 50	
Oct.	22.		120 45	
	25.		00	
	"		43 86	
				7,936 07
1883.		Cr.		
July	31.	1 No. 1 steam-pump ret'd	123 75	
1884.				
July	28.	Gift weather strip 115 [x] 30 f't	2 38	
				126 13
				$7,809 94

And thereupon it is ordered by the court that said claim be, and the same is hereby, referred to William P. Fishback, Esq., master in chancery, to take the evidence and report the same, together with his finding thereon, to this court with all convenient speed.

245 And afterwards, to wit, at the May term of said court, on the 8th day of October, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now John W. Swan and others, by Harris & Calkins, their solicitors, and file their petition herein for a rehearing, which petition is in the words following, to wit:

246 To the honorable judges of the circuit court of the United States for the district of Indiana, in chancery sitting:

Showeth unto your honors your petitioners, John W. Swan and Cephas Atkison, The Cleveland Rolling Mill Company, Wirt D. Walker, H. B. Scutt and Company, Oliver Brothers and Phillips, Charles J. Fitz Simmons and Charles J. Connell, partners as Fitz Simmons and Connell, that they and each of them are parties defendant to the above consolidated causes, the said Swan and Atkison having been made parties as stockholders of said defendant railway company, by order of this honorable court, entered on the 30th day of September, 1885, and the others of your petitioners having been made parties defendant to said bill of said Porter to foreclose said mortgage in pursuance of a stipulation entered into by and between their solicitors and the solicitors of said Henry H.
247 Porter, complainant in said bill, and filed in this court and
made part of the records in said cause and by this court ordered to be done on or about May 6th, 1885, and others of your petitioners last mentioned being at the date aforesaid judgment creditors of said defendant railway company, they having obtained their respective judgments against said railway company at the times and for the amounts respectively as set forth and shown in the pleadings and papers on file in said consolidated causes and to which your petitioners beg leave to refer and make the same or such

part or portions thereof as are or may be material to this petition a part hereof.

Your petitioners further show unto your honors that on or about the 27th day of October, A. D. 1884, the above-named complainants in said creditors' bill, John Hack and others, filed their com-248 plaint in the circuit court of Jasper county, in the State of Indiana, alleging, amongst other things, that said railway company was indebted to said plaintiffs respectively in amounts as stated in said complaint, and that said company was insolvent, and praying, amongst other things, for the appointment of a receiver for the property of said company.

That the appearance of said company was, on or about the day and year last aforesaid, duly entered to said bill, and by the consent of said railway company and on the application of said plaintiffs one Phillip B. Shumway was, on or about the day and year aforesaid, appointed such receiver, and he within a few days thereafter qualified as such receiver by doing those things required of him by law and the order of the court.

Subsequently said last-mentioned cause was removed to the circuit court of Newton county, in said State, and whilst said 249 cause was pending in said Newton circuit court one John C. New filed his complaint in said last-mentioned court for the purpose, amongst other things, of foreclosing the same mortgages mentioned and described in the above bill of complaint of said Porter in this court, in which complaint said New averred that said Porter was the sole owner of all the bonds and coupons issued under and secured by said two mortgages; and in said complaint, and the litigation which took place thereunder in said Newton circuit court, the said New, as trustee in said mortgages, was represented by Hon. R. B. F. Pierce as as his attorney, and the same person who has represented the said Porter in said consolidated causes in this court.

And your petitioners are informed and believe, and so charge the fact to be, that said Pierce, in all of said litigation in said State court, as well as in this court, was in reality the attorney 250 and solicitor of said Porter, hired by him and subject to his (Porter's) direction, as the real client of him, said Pierce.

That afterwards, and on or about March 5th, 1885, said Pierce so acting as the attorney of record for said New (but, as your petitioners are informed, believe, and so charge the fact to be, in fact as attorney for said Porter) in said foreclosure suit, dismissed said suit out of said Newton circuit court, and at the same time was seeking as the attorney for said Porter as the owner of the bonds and interest coupons secured by said two mortgages to have said Porter made party to said suit, wherein said Hack and others were plaintiffs, and remove said suit to this court.

Such proceedings were had in said Newton circuit court in said last-named suit that said court removed said Shumway as receiver as aforesaid, and appointed one William Foster in his stead; 251 and afterwards said suit was, after being once remanded by this court, lodged in this court, which, on the petition of said

Porter for removal finally, and on or about the said 4th day of April, A. D. 1885, took jurisdiction of said cause, in pursuance of an opinion of this court, written out and now on file and made a part of the record of this cause in this court.

Your petitioners further show that after the said suit in which the said John Hack and others are plaintiffs (and which for convenience your petitioners hereinafter designate as the "Hack suit") has been removed to this court, as above mentioned, on or about the 18th day of April, 1885, by order of this court, the said Hack suit was consolidated with the said suit brought by said Henry H. Porter for the foreclosure of said mortgages, and which last-mentioned suit for convenience your petitioners hereinafter designate as the "Porter suit."

252 Your petitioners further show unto your honors that they are informed, believe, and so charge the fact to be, that prior to the time of the removal of said Hack suit to this court, and whilst the same was pending in the Newton circuit court, and afterwards, while that suit and also the Porter suit were pending in this court, and prior to the filing of the answer of the Chicago and Great Southern Railway Company, on May 28th, 1885, as hereinafter referred to, various answers, petitions, complaints, cross-bills, and cross-complaints had been filed in one or the other of said causes, or in said consolidated cause, attacking the right of said Porter to foreclose the said mortgage, amongst other things, on the ground that the bonds and interest coupons secured thereby had been fraudulently issued, and that said Porter was not a purchaser in 253 good faith and for value of said bonds, and that said railway company had a good and perfect defense to said mortgage foreclosure and to said bonds and coupons in the hands of said Porter; and the said Porter and his attorneys and the officers, attorneys, and directors of said railway company well knew that the creditors were avowing their intention of defending against the foreclosure of the said mortgage, and that the said Porter also owned a large amount of the unpaid capital stock of said railway company, for which said creditors were intending to have him assessed in order to pay the indebtedness of said railway company, whether due to the said Porter or to the general creditors of the said company.

Your petitioners are further informed, believe, and so charge the facts to be, that said Porter was on the 28th day of May, 1885, 254 and had been for months before that time in full control of the affairs of said railway company, whose board of directors and officers did precisely as the said Porter directed should be done, they, or some of them, being associated with him in his scheme, as hereinafter set forth.

Your petitioners are further informed, believe, and so charge the facts to be, that some time prior to the 18th day of March, 1882, one Henry Crawford, who was originally a defendant in the said Hack case, was negotiating with William Foster and others, of the State of Indiana, who owned and controlled the said railway company and directed the management of its corporate affairs; that the said

Foster and his associates owned all the capital stock of said company except that which had been subscribed for and had already been paid or was in process of being paid for by the municipalities
255 on the line of said road, as shown by the papers on file in this
case. Within a very few days prior to the 18th day of March, 1882, the said Crawford obtained control of the said railway company and its corporate affairs and the management thereof from the said William Foster and his associates, and either on the 18th day of March or a day or two prior thereto the said Crawford procured the resignation in the board of directory of the said Foster and his associates, or at least a majority of the directors who were acting in the interest of the said Foster and his associates; and at the same time the said Crawford procured or caused to be elected at a pretended meeting of the stockholders or directors of the said company (which these petitioners charge was illegal and void) a majority of said directors, composed of the clerks of the said Crawford, his son, and others in his employ, who had not one dollar of beneficial interest in said road, but simply accepted the position of direct-
256 ors in said company at the request of said Crawford. And after-
wards, on the 18th day of March, 1882, at a pretended meeting of said board of directors (which these petitioners charge was an illegal meeting), the said Crawford presented, and the said directors, or a majority thereof, pretended to go through the form of endorsing, a certain construction contract between the said Crawford and the said railway company, a copy of which is hereunto annexed and made a part hereof and marked Exhibit "A."

And these petitioners set forth and show unto your honors that said construction contract was prepared by the said Henry Crawford, or under his direction; that the same was authorized by said board of directors, not in the performance of their duty as directors of said railway company, but at the behest of the said Crawford, and because and for the sole reason that the said Crawford requested
257 said directors to authorize the said contract to be executed in
the name of the said railway company.

And your petitioners show that the said contract in the provisions thereof was grossly unfair and unjust toward said railway company, and was a fraud upon said company and its stockholders and creditors, and that your petitioners are advised by their counsel, believe, and charge the same to be true, that the said pretended contract was fraudulent and void from the manner in which it was entered into, having been dictated as to its terms and provisions by the said Crawford, without any one acting in the interest of the said railway company consenting thereto.

And your petitioners further show unto your honors that they are informed, believe, and so charge the facts to be, that afterwards, and whilst the said Crawford was engaged in building the said road
258 under the terms of said pretended contract, the same pre-
tended board of directors of said railway company, acting in the interest, for the benefit, and at the dictation and direction of the said Crawford, voted from time to time as he, the said Crawford, requested, the delivery of the first-mortgage bonds and the shares of

capital stock mentioned under said pretended construction contract to the said Crawford, and the same were delivered to him.

And your petitioners are informed, believe, and so charge the facts to be, that at some one or more of the pretended meetings of the said board of directors, wherein the first-mortgage bonds of said company were voted, and which are now a part of the bonds claimed to be owned and held by the said Henry H. Porter, certain of the members of the board of directors of the said company who were reported on the records of said company setting forth the meet-
259 ings of said board of directors as being present, were not in
fact present, but were absent from said meeting, and were absent from the city of Chicago, in which the said meeting or meetings were pretended to be held.

And your petitioners further show unto your honors that all the bonds and interest coupons now held by the said Henry H. Porter, and also all the capital stock held by him, as hereinafter mentioned, were delivered or taken possession of from said company by said Crawford under the provisions of said pretended contract, which your petitioners charge was and is fraudulent and void.

Your petitioners also state, on information and belief, and charge that the said Henry Crawford, under the provisions of said pretended construction contract, received or took from said railway company about the sum of $1,800,000, par value, of the capital stock of the said railway company as stock full paid and non-assessible.

260 Your petitioners further show unto your honors that they are informed, believe, and so charge the facts to be, that afterwards, and after said bonds and stock had been obtained by said Henry Crawford from the said railway company, and on or about the 1st day of January, 1883, he, the said Crawford, delivered the said bonds, the said stock, and the said fraudulent construction contract to a firm of bankers in the city and State of New York, known as Drexel, Morgan and Company, by way of pledge to secure the repayment of certain advances of money made by the said Drexel, Morgan and Company to the said Crawford, amounting, in the aggregate, to the sum of about $350,000; that said banking firm of Drexel, Morgan and Company never became the absolute owners of
said bonds, stock, or construction contract, but simply held
261 the same as collateral security for the indebtedness of said
Crawford to them as aforesaid, and knew when they took the same of the fraudulent character of said construction contract.

These petitioners further show unto your honors that afterwards, and on or about the 26th day of December, 1884, whilst the said railway and property were in the hands of a receiver, appointed, as aforesaid, by the Indiana State court, and at a time when said Henry H. Porter knew about the indebtedness of said railway company, he, the said Porter, entered into a contract to and with the said Crawford, as these petitioners are informed, believe, and so charge the facts to be, for and on behalf of himself, said Porter, and his associotes interested with him therein, and organized for the purpose of completing the construction of said line of railway of the said railway company, which it was authorized to construct

262 in and by the terms of which agreement said Crawford was
to, and, in fact, did, sell, assign, and set over unto the said
Henry H. Porter, for himself and his associates, all and singular
his, the said Crawford's, right, title, and interest in and to said bonds
and stock and construction contract so pledged to the said Drexel,
Morgan and Company as collateral security for the said amount of
of $350,000 as aforesaid, to the said Henry Crawford, and in consideration of which sale and assignment by said Crawford to the
said Porter and associates the latter agreed to pay for said bonds
and stock the sum of $500,000, of which the sum of $392,363 (24
less the sum of $2,600, allowed by the said bank to the said Crawford as rebate in computation of interest on said loan), paid by
the said Porter to said Drexel, Morgan and Company for and
on account of the loan by the latter to said Crawford
263 of said $350,000, with the accrued interest thereon, making
the sum paid by said Porter for himself and associates to said
Drexel, Morgan and Company, on account of said loan to said Crawford, with accrued interest thereon, the sum of $389,763.24; and the
balance of said $500,000, being the sum of about $110,236.76, was
to be and was retained by said Porter, and is now in the possession
and control of said Porter and his associates, for the purpose of paying any and all claims adjudged and decreed by a court of competant jurisdiction to be prior and paramount to the lien of said bonds
of said railway company, being the bonds in question in this suit,
and that the balance of said last-named sum of money left after
paying all claims decreed by order of a court of competant
264 jurisdiction to be prior and paramount to the lien of said
bonds of said railway company, being the bonds in suit, was
to be paid over to the said Henry Crawford; and it was further
agreed in said contract between said Porter and said Crawford that
if the said Porter and his associates, known in said last-mentioned
contract as [the] syndicate, should obtain more than the sum of
$500,000 for said bonds and stock *that* the said Crawford was to have
one-quarter of the proceeds of the sale thereof over and above said
$500,000, but in no event was said Crawford's share of the proceeds
of said sale in excess of said $500,000 to exceed the sum of $250,000.

And your petitioners are further informed, believe, and so charge
the facts to be that the persons interested with said Porter in the
ownership of said bonds and shares of said capital stock and in said
enterprise of extending the said line of railway as above men-
265 tioned [are] Samuel M. Nickerson, Henry Seibert, David
Dows, J. M. Durand, Alexander J. Leith, Robert Long, Isaac
H. Wing, E. W. Winter, and E. F. Laurence.

And these petitioners further show unto your honors that the said Porter and those associated with him, from the time of his attempt to foreclose the mortgage securing the bonds of said railway company held by him, has been constantly endeavoring, both in said State court, until said suit was dismissed therein, and also in this court, to procure an adjudication in his favor as to his ownership in good faith of said bonds and a foreclosure of said mortgage, without allowing any one interested in said railway company or in the

property thereof an opportunity to defend against said foreclosure,
and to subject the matters in controversy to judicial investigation.

And your petitioners are informed, believe, and so charge
266 the facts to be that the said Porter and those interested *in*
him conspired together to procure such judicial decree without
a judicial investigation, and as a part of said conspiracy, on or
about May 28th, 1885, the said Porter and those acting with him
procured one E. F. Laurence, claiming to be the president of the
company, and interested with the said Porter in the ownership of
the said bonds and capital stock, as hereinbefore stated, to sign an
answer on behalf of said railway company, as the president thereof,
and one Henry A. Gardener, a private and personal attorney of said
Porter, to sign said answer as the pretended solicitor of said railway
company, in and by which said answer said railway company not
only was made to falsely and fraudulently admit all of the allegations
in the bill of complaint of said Porter, but whilst said original
mortgage and supplemental mortgage sought to be fore-
267 closed by the said Porter in his bill of complaint as aforesaid
nowhere provided that the principal sum of the bonds secured
by the said mortgage should become due presently after the
failure to pay the interest due upon said bonds, or for any other
reason, and whilst the principal sum of said bonds was to become
due, according to the tenor of said bonds, on the first day of January,
1912, there was no provision, either in said bonds or in either of said
mortgages, original or supplemental, securing said bonds providing
for the principal sum of the bonds to become due in any event before
their maturity, as aforesaid, yet the said answer of the said railway
company falsely and fraudulently confesses that the principal
sum of said bonds, amounting to $1,200,000, which could not become
due for a period of over a quarter of a century, should become and
were then justly due, and that for such principal, together
268 with the interest, said Porter was entitled to be paid, and for
a decree and foreclosure accordingly. And your petitioners
annex hereto and make a part hereof a copy of said answer last
mentioned, and mark the same Exhibit B. Your petitioners further
show unto your honors that they are informed, believe, and so
charge the facts to be that certain townships along the line of said
railway, along about the year 1880, voted to subscribe to the stock
of the Indiana and Chicago Railway Company, which company was
succeeded by and all its property and franchises transferred to the
said Chicago and Great Southern Railway Company; that said
townships voted to subscribe for, take, and pay for stock in said company
to the aggregate amount of about $52,000, and that afterwards
said townships did pay for said stock the above amount,
and about the 2nd day of May, 1885, the said townships which
had thus voted to subscribe for stock in said railway
269 company, in and by the name of school townships, respectively,
filed their petition to be made parties and allowed
to defend against the foreclosure of said mortgage in said cause,
and while said application was pending, and which showed the inequity
and injustice of allowing the said Porter to inforce a fore-

closure of said mortgage as prayed for by him, the said answer of the said railway company was filed; that afterwards, on the 20th day of June, 1885, this court having refused to allow the said school townships to be made parties the said townships, as civil townships, filed their answer and petition in this honorable court to be made parties and to be allowed to defend against said foreclosure as stockholders of said railway company, which application was also by this court, on the 29th day of June, 1885, rejected; that afterwards, and some time prior to the 17th day of August, 1885, your peti-
270 tioners, John W. Swan and Cephas Atkison, as large tax-
payers and citizens of Oak Grove and Union townships, in Benton county, Indiana, and as persons who had contributed to the payment of the taxes assessed for the payment of said stock subscribed for by said townships in said railway company, filed their petition to be made parties defendant in said Porter suit, consolidated as aforesaid, and also filed their proposed answer to the bill of complaint of said Porter, and made said answer a part of their said petition, and asked that they be admitted as parties defendant to said suit, and to defend the said railway company and the interests of its *bona fide* stockholders.

And after said petition had been presented to the Honorable William A. Woods, presiding as judge of said circuit court, and had been under consideration by him for some days, the said in-
271 terlocutory decree or decretal order hereinafter complained
of was entered by order of the said judge.

And these petitioners further show unto your honors that they are informed, and believe and so charge the facts to be, that on the 17th day of August, A. D. 1885, whilst the said petition of your petitioners, Swan and Atkison, as such tax-payers and equitable stockholders of said railway company, and their proposed answer on behalf of said railway company to said Porter's bill of complain*ant* were pending in this honorable court and taken under advisement by the Honorable William A. Woods, sitting as circuit court judge as aforesaid, and whilst there were pending in this court the answers of numerous judgment creditors who were parties defendant to said Porter's suit for foreclosure, setting forth their grounds of defense against the foreclosure of said mortgage substantially, all in the line of the matters that are herein above set forth as a defense to the fore-
272 closure of said mortgage, and to all of which your peti-
tioners beg leave to refer, the same as if they were made a part hereof (as well as to all the other papers, documents, orders, and decrees of said court in said consolidated cause), and whilst the most of the attorneys engaged in said cause were off upon their summer vacations, the aforesaid R. B. F. Pierce, Esq., as attorney for said complainant, as your petitioners are informed and believe, and so charge the facts to be, on said day and year last mentioned, some time during the said day, infor*ed*med the Hon. W. H. Calkins, one of the counsel for your petitioners, in the city of Indianapolis, that in about two hours from that time he, Pierce, would submit a decree to the said judge, sitting in chambers, for the sale of said

property; and that during the time mentioned by said Pierce, the said Calkins appeared in said court, before the said judge,
273 in chambers, in the city of Indianapolis, whereupon the said Pierce, as attorney for said Porter, presented the decree hereinafter set forth and complained of, and asked that the same be entered, and the said Calkins objected thereto and insisted that such decree should not be entered; but, nevertheless, said judge of said court, sitting in chambers, then and there directed the said decree to be entered, and the same then and there was entered as a part of the records of said court by the direction of the said judge, and the same was and is in the words and figures following:

In the Circuit Court of the United States for the District of Indiana.
May Term, 1885. Chancery.

Present: Hon. Wm. A. Woods, judge.

HENRY H. PORTER
vs.
THE CHICAGO & GREAT SOUTHERN RAILWAY COMPANY *et al.*

AUGUST 17TH, 1885.

274 And now this cause coming on to be heard upon the bill of complaint of said Henry H. Porter, and the answer of the said Chicago and Great Southern Railway Company, and the *pro confesso* order as to John C. New, trustee, and also upon the proofs and exhibits in the cause, and all the parties to this suit being present and before the court, and the said cause having been fully argued, and the court being fully advised, doth now find that the matters and things in said bill of complaint alleged are true, and that the equity of the cause is with the complainant, Henry H. Porter.

And the court finds that there is due to the said Henry H. Porter, on the interest coupon falling due July 1st, 1882, the sum of thirty-six thousand ($36,000) dollars, together with interest from that day to July 1st, 1885, amounting to six thousand four hundred and eighty ($6,480) dollars, making the total amount due as aforesaid on said coupon forty-two thousand four hundred and eighty ($42,480) dollars.

275 And the court finds that there is due to the said Henry H. Porter on the interest coupon falling due January 1st, 1883, the sum of thirty-six thousand ($36,000) dollars, together with interest from that day to July 1st, 1885, amounting to five thousand four hundred ($5,400) dollars, making the total amount due as aforesaid on said coupon forty-one thousand four hundred ($41,400) dollars.

And the court finds that there is due to the said Henry H. Porter on the interest coupon falling due July 1st, 1883, the sum of thirty-six thousand ($36,000) dollars, together with interest from that date to July 1st, 1885, amounting to four thousand three hundred and twenty ($4,320) dollars, making the total amount due as aforesaid on said coupon forty thousand three hundred and twenty ($40,320) dollars.

And the court finds that there is due to the said Henry H. Porter on the interest coupon falling due January 1st, 1884, the sum
276 of thirty-six thousand ($36,000) dollars, together with interest from that day to July 1st, 1885, amounting to three thousand two hundred and forty ($3,240) dollars, making the total amount due as aforesaid on said coupon thirty-nine thousand two hundred and forty ($39,240) dollars.

And the court finds that there is due to the said Henry H. Porter on the interest coupon falling due July 1st, 1884, the sum of thirty-six thousand ($36,000) dollars, together with interest from that date to July 1st, 1885, amounting to two thousand one hundred and sixty ($2,160) dollars, making the total amount due as aforesaid on said coupon thirty-eight thousand one hundred and sixty (38,160) dollars.

And the court finds that there is due to the said Henry H. Porter on the interest coupon falling due January 1st, 1885, the sum of thirty-six thousand (36,000) dollars, together with interest from that date to July 1st, 1885, amounting to one thousand and eighty
277 ($1,080) dollars, making the total amount due as aforesaid on said coupon thirty-seven thousand and eighty ($37,080) dollars.

And the court finds that there is due to the said Henry H. Porter on the interest coupon falling due July 1st, 1885, the sum of thirty-six thousand ($36,000) dollars, making the total amount due on said coupons two hundred and seventy-four thousand six hundred and eighty ($274,680) dollars, with interest thereon at 6 per cent. per annum from the said 1st day of July, 1885.

And the court further finds that there is due to the said complainant, Henry H. Porter, from the said defendant on the 1st day of July, 1885, for the principal sum of said bonds the sum of one million two hundred thousand ($1,200,000) dollars, together with interest thereon at 6 per cent. from said date, making the total amount of principal and coupons, with interest thereon, due on the 1st day of July, 1885, *of* one million four hundred and seventy-four
278 thousand six hundred and eighty ($1,474,680) dollars, together with interest at 6 per cent. thereon from the said 1st day of July, 1885, which the said complainant is entitled to recover from the said defendant railway company upon the bonds and coupons mentioned in said bill of complaint and secured by the two deeds of trust executed to John C. New, as trustee.

It is therefore ordered, adjudged, and decreed in this cause as follows:

First. That within five days from this date the defendant, The Chicago and Great Southern Railway Company, do pay into this court for the use of said complainant, Henry H. Porter, the said sum of one million four hundred and seventy-four thousand six hundred and eighty ($1,474,680) dollars, with interest from July 1st, 1885, at the rate of 6 per cent. per annum, and also that said defendant do pay the costs and charges of the complainant in and about this suit in this behalf laid out and expended.

279 Second. That the equity of redemption of the defendants

and all persons claiming by, through, or under them or either of them in, to, and over the said mortgaged property and premises, to wit, all and singular the line of the railway of the said defendant corporation, The Chicago and Great Southern Railway Company, constructed or to be constructed, from Fair Oaks, in Jasper county, extending through the counties of Newton, Jasper, Benton, Warren, Fountain, and Clay, to the city of Brazil, in said county of Clay, all being in the State of Indiana, together with all the lands, tenements, and hereditaments acquired or appropriated for the purpose of a right of way of said railway, including all side tracks and rights of way for the same, and also all depot and station grounds, and all depots, engine-houses, car-houses, station-houses, warehouses, machine-shops, car-shops, workshops, freight-houses, grain-
280 houses, and elevators, and other erections and superstructures; all machinery, tools, and implements held or acquired for use in connection with said railway; and also all locomotives, tenders, cars, and other rolling-stock and equipment, rails, bridges, ways, piers, carriages, chairs, spikes, wheels, axles, ties, and all fuel and other stores and supplies belonging to or that may from time to time belong to or be provided for use upon or in connection with said railroad, with all and singular the appurtenances, and the rents and incomes and profits of the same, and all the franchises and other rights of the said railway company pertaining to the said railway be, and the same is hereby, barred and forever foreclosed.

Third. The said corporate property, to wit, the said railway, with its franchises, estate, property, and effects of every nature, as set forth and described in said deeds of trust, be sold at the city of Indianapolis, in the S-ate of Indiana, upon due notice given *given* of
281 the time, place, and terms of such sale by advertisements to be published not less than three times a week for six successive weeks in a newspaper published in the city of New York; also in a newspaper published in the city of Chicago, State of Illinois, and also in a newspaper published in the city of Indianapolis, State of Indiana; and William P. Fishback is hereby appointed master in chancery, and as such empowered to execute this decree according to the terms thereof, and is required to make prompt report and payment of moneys derived from such sale to this court immediately after the execution of this decree.

Fourth. Such sale shall be for cash and no bid shall be received for less than three hundred thousand ($300,000) dollars, one hundred thousand ($100,000) dollars of which shall be paid at the time of sale, and the balance shall be paid into court upon con-
282 firmation of the sale, unless the court shall at that time otherwise order.

Fifth. Upon the report of the sale of the property, franchises, rights, and interests described in said trust deeds, which the master is required to make forthwith after such sale, and upon full compliance with the terms of such sale by the purchaser, and the approval thereof by this court, the purchaser will be entitled to a deed conveying to him absolutely the said mortgaged railway, rights, property, franchises, interest, and effects, real and personal, as fully as the same are now held and owned by the said defendant corporation.

Sixth. All questions of distribution necessary to be considered in this cause, and allowances proper to be made, as well as all other questions not disposed of by this decree, are reserved for the future action of this court, being hereby intended and ordered that
283 the property be sold free from all demand, liens, and incumbrances whatsoever, and that the fund arising from the sale be brought into court, subject to the right of all parties, or all who may be made parties, as their respective rights shall hereafter be determined; and nothing in this decree shall in any way preclude any claimant from asserting his right in and to the fund arising from such sale. And in behalf of all parties and applicants to be made parties Harris and Calkins, as solicitors, except to said decree and each part thereof, and are allowed thirty days to file a specific statement of exceptions and grounds therefor, with the same effec as if filed now.

And afterwards and on the 7th day of September, A. D. 1885, the said Harris and Calkins, as authorized by the said decree, filed their bill of exceptions to the proceedings of said court in the mat-
284 ter of entering said decree, and the same were by the said judge allowed to be filed, subject to any motion to modify the same. And your petitioners show that no motion to modify the statements in said bill of exceptions has ever been made since the same were filed and allowed, and the said bill of exceptions, as a part of the record in this case *were* and *are* in the words and figures following to wit:

UNITED STATES OF AMERICA:

In the Circuit Court of the United States, District of Indiana.
In Chancery.

HENRY H. PORTER
vs.
THE CHICAGO AND GREAT SOUTHERN RAILWAY COMPANY.

Be it remembered that on the 17th day of August, in the year 1885, the said complainant, by R. B. F. Pierce, his solicitor, appeared before the undersigned, district judge of the United States
285 for the district of Indiana, acting as circuit judge, and asked for the entry of a decree in the said above-entitled suit, and then and there submitted the draft of a decree, which he asked to be entered. And also at the same time W. H. Calkins. Esq., solicitor for certain of the stockholders and creditors of said defendant corporation, appeared in answer to a request made by the said R. B. F. Pierce, and then and there resisted the request made to have a decree entered upon the following grounds—that is to say:

1. That no notice had been given him or the other solicitors appearing for the same and other creditors of the intention of the said Pierce to submit said motion, and that the request made by the said Pierce of the said Calkins to be present at that time had been given

only about two hours before that time, during which time the noon intermission occurred.

2. That no other notice had been given to the said Calkins, 286 or to any of the other solicitors appearing for the defendants to said bill of the said Porter of the intention of the said Porter to submit a request to enter a decree in said suit at said time.

3. That the said W. H. Calkins, as solicitor of some of said creditors and some of the stockholders of said defendant corporation, then and there protested against the entry of any decree at that time, because the issues tendered by the answers of said stockholders and creditors on their answers then and theretofore filed, and upon the cross-bill theretofore filed by some of the creditors of said defendant corporation, had not been replied to, nor the cross-bill answered unto, and no issue had been joined upon the facts so pleaded by said cross-bill and answers, and that no evidence had been taken, and that no order of reference had been made, and the cause was not then ripe for a decree.

287 4. And because the court had no authority or jurisdiction under the practice in said court to enter a decree in said cause foreclosing the mortgage in suit against the defendants thereto appearing and resisting the same, or any of them, before the issues were closed and evidence heard touching said issues, and such proceeding was without authority of law and void.

Yet, nevertheless, over these objections and the general objection and protestation then and there made by the said W. H. Calkins, Esq., there being no other solicitor present representing any of the defendants or having notice thereof, and there being no defendant present or having notice thereof, and no solicitor representing the Chicago and Great Southern Railway Company, defendant, the court did entertain the motion of the complainant's solicitors to receive the decree by him tendered, and ordered the same to be en- 288 tered of record as a judgment in said court and cause, and gave thirty days' time unto the defendants to tender and file exceptions in writing to the said decree, which is now done within said time, and is signed and sealed by the Honorable William A. Woods, then and now sitting as judge of the circuit court of said district in the absence of the circuit judge, and the same is ordered to be filed and made a part of the record.

Your petitioners further show unto your honors that at the time of the entry of said decree not only had those of your petitioners who were and are judgment creditors of said railway company as aforesaid reposing upon the files of this court in said cause answers denying the right of said Porter to said bonds, as above stated, and defending against the foreclosure of said mortgage, and not 289 only had your petitioners, Swan and Atkison, their petition [and] answer before said court undisposed of, but also other creditors had filed answers and petitions setting forth defenses to said proposed foreclosure of said mortgage and supplemental mortgage, to none of which, as your petitioners are informed and believe, and so charge the facts to be, had any replications been filed by said

complainant, Porter, nor had the said cause been referred to a master, nor had up to the time or when the said decree was entered the said Porter ever produced in evidence a single bond or coupon of said railway company claimed to be owned by him, nor had he ever produced either the original or supplemental mortgage described by him in the bill to foreclose the same, nor, as your petitioners are informed and believe, and so charge the facts to be, had any evidence been taken or submitted to said court, or any proof introduced in
said cause of any kind, name, or nature authorizing a foreclosure
of said mortgages, or showing or going to show that it is for
290 the advantage of any of the parties interested in the said rail-
road property, now in the possession and custody of this honorable court, that the same be sold in the manner provided in said decree.

And your petitioners further show unto your honors that on said 17th day of August, when said decree was entered in said case, there were other judgment creditors of said defendant railway company besides your petitioners and also other persons having valid claims against said railway company, some unsecured and others claimed by the respective creditors to be secured by special lien upon the property of said railway company embraced in said mortgages, and superior to the lien of said mortgages. Many of said above-mentioned judgment and other general or lien creditors had appeared
in said suit and set up their special liens as superior to said mort-
gages, or in other cases relied upon their judgments as para-
291 mount in lien to said mortgages, having been represented in
said cause by counsel other than the counsel representing
your petitioners, none of whom, as your petioners are informed, believe, and so charge the facts to be, knew or were notified of the motion of said R. B. F. Pierce that he proposed to ask said court to enter said decree.

Your petitioners, The Cleveland Rolling Mill Company, and the others of your petitioners, who are judgment creditors, as above set forth, further show that their solicitors who had been attending to said claims and contesting said foreclosure from the first were N. L. Wiley, Esq., of Fowler, Indiana, and John S. Cooper, of Chicago, Illinois, and that neither of them, nor A. C. Harris, Esq., the other solicitor for your petitioners, nor any of your petitioners, knew or
were ever informed or given notice of the said motion to enter said
decree, but on the contrary thereof neither of said three
292 solicitors nor any of your petitioners knew or heard about
the proposed action of said court until after said decree was
entered. And the one of your petitioners' solicitors who was present when said decree was entered had but recently appeared in said case and was less familiar with it than said Wiley or Cooper.

And your petitioners are further informed, believe, and so charge the facts to be, that said decree was prepared and presented to the said district judge as aforesaid on the day that said judge was going to and did leave on his summer vacation for the Eastern States, and when the other attorneys could not be heard; and petitioners charge that it was done by said Pierce for the express purpose of procur-

ing for said Porter a judicial decree in favor of said Porter
293 without any judicial inquiry, and for the purpose of cutting
off these petitioners and others interested in said railway
property from any legal inquiry; and petitioners further charge that the said decree, in so far as it recited that the court found the allegations of said Porter's bill of complaint true, and the equity of the cause with said Porter, and that the railway company was indebted to him for the interest and principal as in said decree found and set forth, and that the said railway company be decreed to pay into the court for his use the sum mentioned in said decree within five days from the entry of said decree—that said statements, findings, and orders were a surprise upon said district judge.

That said Pierce procured said decree to be rushed through in a short time on the eve of said judge's departure from the said city of Indianapolis as aforesaid, and had those provisions inserted in said
decree and procured them to be retained therein when
294 said decree was entered for the purpose of getting an adjudi-
cation in favor of said Porter when said court did not intend by said decree to make any adjudication in that regard, but simply to sell all said property and franchises free and clear from liens, and have the proceeds of the property at the sale take the place of the property itself.

And your petitioners further show unto your honors that in the present complicated state of the record in said consolidated causes, and the errors in entering said decree under the circumstances as shown, your petitioners are advised by their counsel, informed, believe, and charge the same to be true, that no persons who might otherwise bid at the sale of said railroad property will feel safe in bidding on said property under said decree on account of the grave
doubt as to whether a sale thereunder will insure a good title
295 thereto to the purchaser, and if said sale proceeds under said
decree it is almost a certainty that said Porter or his associates as aforesaid, acting in the same interest, will be the only bidders at said sale, which your petitioners charge is exactly what said Porter and his associates are desirous of bringing to pass.

And your petitioners further show and charge that if said decree shall be allowed to stand, and the sale of said property take place thereunder, that the same will be to allow said Porter and his associates to consummate their said scheme and conspiracy to procure a judicial decree in favor of said Porter as the holder and owner of said bonds in good faith by cutting off your petitioners from having any judicial inquiry made into those questions.

And your petitioners therefore represent and show the following
special causes or matters for rehearing of the action of this
296 court herein complained of and which terminated in the
entry of said decree, and for a rehearing of said decree itself, viz:

First. Because when said decree was entered there were answers, by parties defendant, setting forth facts denying the equities of said Porter's bill of complaint, on file in said Porter's case and in said consolidated case, to which said Porter had not filed any replication and upon which no proof had been taken.

Second. Because, when said decree was entered, there had been no judicial inquiry made, nor was there any legal evidence on file in said Hack and Porter suits, or said consolidated cause, touching the question as to whether it was for the interest of any of the parties to the suit, or as to whether it was just and equitable that any such sale of said railway property and franchises should be made as ordered in said decree, your petitioners respectfully 297 submitting that a court of equity will not sell property in its possession before a final decree determining the rights of the parties before it to such property, without a judicial inquiry, and showing that such sale ought in justice and equity to be made.

Third. Because, at the time said decree was entered, your petitioners, Swan and Atkison, had their petition as stockholders of said railway company, and their proposed answer to said Porter's bill of complaint before said court, and since said decree was entered they have been allowed to become parties defendant to said Porter's bill of complaint, and allowed to file their said answer thereto as stockholders of said railway company, and said decree should be set aside to enable said Swan and Atkison to litigate said Porter's equities in the premises, that being the purpose of their application to this court, and this court having held that they should be allowed so to 298 do, it would, they submit, be inequitable to cut them off from so doing by allowing said decree, entered after their application was made, to stand when such decree was entered under the facts and circumstances as shown hereinabove, and by the records and files in said consolidated causes.

Fourth. Because the entry of said decree was made without due and proper notice, and in a manner obnoxious to the rules of this honorable court and the equity rules prescribed by the Supreme Court of the United States, and to the due and orderly administration of justice in courts of equity.

Fifth. Because the entering of said decree operated as a surprise and fraud upon these petitioners and other parties in said above-entitled causes.

Sixth. Because the recitals and findings in said decree were 299 and are false in fact, and the same were and are a fraud upon the court and these petitioners in these, amongst other, particulars, viz:

Said cause did not come on to be heard upon said Porter's bill of complaint, and the answer of said railway company, and the default of New, and upon the proofs and exhibits in said cause, as stated in said decre; but, on the contrary, said Pierce's motion for the entry of said decree was all there was before said court, and no proofs whatever were introduced, nor have they ever been introduced, in support of Porter's said bill of complaint.

The said cause had not been fully argued, as stated in said decree, because answers had been filed to said bill denying the facts stated therein, and said Porter had not only never introduced any proof in support of his bill, but had not even taken issue as to the

300 facts by filing replications to the answers, so that there was nothing to argue as to the merits of the cause.

The court did not find that the matters and things in Porter's said bill of complaint alleged were true, nor that the equity of said cause was with said Porter, as stated by said decree, because there had been no inquiry as to those matters by the court and judicial inquiry, your petitioners submit, must precede judicial findings.

The court did not find that there was due to said Porter from said railway company the various sums on account of interest upon the bonds of said railway company, as stated in said decree, because said Porter never made any legal proof that he owned any bonds of said railway company.

The court did not and could not find that there was due said Porter from said railway company on the 1st of July, 1885, the sum of $1,200,000 as principal of the *of the* bonds of said railway company owned by said Porter, because said bonds by their 301 terms were due and payable January 1st, A. D. 1912, and there was and is no provision, either in the said original mortgage or said supplemental mortgage, or in said bonds, or anywhere else, providing that said bonds should ever become due and payable before that date, save and except in said decree; but your petitioners submit that it is not within the power or province of a court of equity to decree that an obligation which does not become due for more than twenty-six years shall become due instantly, and require the obligor to pay it in five days.

Seventh. Because the said railway company in and by said decree is only given the period of five days in which to pay the enormous sum of $1,474,680—a period of time utterly inadequate under the facts and circumstances of the entering of said decree and of said case.

Eighth. Because by the provisions of said decree, although 302 said railway company should pay the full amount adjudged against it within the five days specified, nevertheless the sale of its property and franchises was required by said decree to be made precisely the same as if nothing had been paid.

Ninth. Because it has not yet been determined that any sale of the property and franchises of said railway company will have to be made.

Tenth. Because the errors committed in entering said decree and the facts and circumstances shown of record in said consolidated causes have thrown a cloud upon the title which any purchaser would acquire at a sale under said decree, and have thereby stifled and prevented competition at said sale.

Eleventh. Because said decree and the action of said court in entering the same under the facts and circumstances disclosed of record in said consolidated causes were in many other respects erroneous, irregular, inequitable, unjust, and oppressive toward 303 these petitioners and other creditors and stockholders of said railroad company, as shown by the records in said consolidated causes, and by the papers, pleadings, and documents on file therein, to which your petitioners beg leave to refer in support of this petition the same as if they were specifically set forth herein.

Wherefore these petitioners bring this their petition, not only on behalf of themselves, but all other stockholders and creditors of said defendant railway company similarly situated, and humbly pray this honorable court that in consideration of the premises it will allow this petition to be filed in said consolidated cause, and that upon a hearing of the matters and things in said petition contained it will order, adjudge, and decree that said interlocutory decree or decretal order entered by this court on the 17th day of August, A. D. 1885, in said cause, and which is specifically hereinbefore 304 set forth, shall be reheard, cancelled, set aside, and for naught held, and that your petitioners may have such further and other relief in the premises as shall be agreeable to equity and good conscience.

And your petitioners will ever pray, &c.

JOHN W. SWAN,
CEPHAS ATKISON,
CLEVELAND ROLLING MILL CO.,
WIRT D. WALKER,
H. B. SCUTT & CO.,
OLIVER BROS. & PHILLIPS,
J. FITZSIMMONS & CONNELL,
By HARRIS & CALKINS & STRAIGHT,
WILEY & CARTER,
Their Sol's.
JOHN S. COOPER,
Of Counsel for said Petitioners.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

Henry Meisellar, being first duly sworn, deposes and says that he is an attorney-at-law, residing in the city of Chicago, in said northern district of Illinois; that he is attorney and agent for several creditors of said defendant railway company in the foregoing-entitled cause; that he has been and is familiar with the affairs of said railway company, and with said litigation referred to in the 305 foregoing petition; that he has read the foregoing petition and knows the contents thereof, and that the matters and things therein stated are true of his own knowledge, except as to such matters as are therein stated to be on information and belief, and [as] to such matters he believes it to be true:

HENRY MEISELLAR.

Subscribed & sworn to before me Oct. 7, 1885.

E. A. DRUMMOND,
U. S. Comm'r.

306 EXHIBIT "A."

This agreement, made this 18th day of March, A. D. 1882, between Henry Crawford, of Chicago, Illinois, the party of the first part, and the "Chicago and Great Southern Railway Company," a corporation organized under the laws of the State of Indiana, the party of the second part, witnesseth :

That for and in consideration of the payments and covenants of the party of the second part, as hereinafter set forth, the party of the first part hereby agrees to procure the right of way for and fully grade, bridge, construct, and equip the northern division of the railway of the party of the second part, extending from a junction with the Louisville, New Albany and Chicago railway, about ten miles northwest of Rensselaer, or such point of junction as may be fixed on by the parties, and thence southwardly through the coun-
307 ties of Jasper, Newton, Benton, Warren, Fountain, Parke, and Clay to Brazil, Indiana, in accordance with the terms and specifications hereinafter set out—that is to say, the said party of the first party agrees—

First. To procure a complete right of way of sufficient width over and upon the said entire route for the line of railway, and also sufficient and suitable grounds for sidings, depots, switch-yards, turn-tables, water-tanks, and other appendages ordinarily needed by a railway for its proper operation.

Second. That he will also in a proper and workmanlike manner grade and bridge the said railroad, lay down thereupon two thousand and six hundred and forty ties to the mile, either of oak, hemlock, cedar, or other proper wood, and lay down thereupon either iron or steel rails, to be not less than fifty-two pounds to the
308 lineal yard, and securely fasten the same by fish-plates, four bolts to each joint, and thoroughly spike down the rails over the entire length of line, and will also procure and put down all of the necessary crossing-frogs, turn-outs, switch-stands, and appurtenances necessary to complete the line ready for business. All such graduation, bridging, track-laying, ties, and rails to be out of good quality and construction, and the whole work to be done in a workmanlike and proper manner, and the road to be surfaced with a smooth and proper surface, and all necessary and proper road crossings, bridges, and cattle-guards to be placed along the line.

Third. The party of the first part will also erect all such necessary depots, water-tanks, tool-houses, turn-tables, and stock-
309 pens as may be necessary and proper for the handling of such business as may be offered to the said line on its completion, and he will also put in proper sidings at convenient points, so as to enable the business of the line to be handled with economy and despatch. Said party of the first part agrees also to purchase, pay for, and place upon the road a sufficient amount of engines and passenger and freight cars as to enable it to handle with reasonable promptness all the business that may be offered to it at such time as it is completed and opened for business, being such an amount of equipment as is usually placed upon roads of similar character upon completion.

Fourth. He will also erect upon the right of way alongside
310 of the road a line of telegraph and procure the same to be properly wired and have an amount of instruments and bat-

teries placed at proper stations on the road, so as to afford proper facilities for the handling of trains and traffic over the road.

The party of the first part agrees that the said work herein agreed to be done shall be begun with promptness, and prosecuted with such diligence that the same shall be entirely completed by June 1st, A. D. 1883, provided, however, if by reason of injunctions or bad weather, floods, or unforeseen circumstances, or the failure of contractors, the work of construction shall be delayed or temporarily prevented, then the party of the first part shall have the above contract time of completion sufficiently extended to meet and equalize any such unexpected delays.

311 In consideration of the above premises on the part of the party of the first part the said party of the second part hereby agrees as compensation and payment and as an agreed price for such grading, bridging, labor, material, right of way, and equipment, as aforesaid, to pay the said party of the first part—

First. All donations of stock, right of way, land, labor, material, or money that have heretofore or may hereafter be at any time acquired by the party of the second part or for its use or benefit.

Second. Also to pay and deliver to the party of the first part two million dollars of the full-paid non-assessible shares of the capital stock of the party of the second part.

312 Third. Also to pay and deliver to the party of the first part the issue of two million dollars of its first-mortgage six per cent. gold bonds, which are secured by the mortgage or trust deed, dated November 1st, 1882, and executed to John C. New.

Fourth. Also to pay and deliver to the party of the first part two million dollars of the income bonds of the party of the second part, which bonds shall bear not to exceed seven per cent. interest, payable annually, but which interest shall be payable exclusively out of the net earnings of said northern division after payment of the interest on its first-mortgage bonds, operating expenses, taxes, and proper renewals and repairs, but said interest shall be non-cumulative; such bonds to be secured by a trust deed, with proper covenants to such trustee as may be agreed on between the parties. 313

It is further agreed that the payment of such stock, first-mortgage, and income bonds are to be made to the party of the first part in proportion as the work of construction from time to time progressed, and the said party of the first part shall have the absolute right to demand and receive the full amount of fifteen thousand dollars in stock and the same amount of first-mortgage bonds and the same amount in income bonds for each and every mile of main track as fast as laid, and for all equipment as fast as placed on the road the party of the first part shall have the right to demand and receive the first-mortgage bonds aforesaid, at the rate of sixty-six cents on the dollar, to equal the full appraised value of such equipment, as fixed by the engineer of the party of the second part, and also the same amount of income bonds and stock. 314

On the completion of the road or termination of this contract the party of the first part shall have the right to demand and receive any balance of stock and bonds that may remain at such time still undelivered to him out of the total contract price.

It is further agreed that the said party of the first part is to have the full possession and control of each and every part of said 315 line of railroad and equipment and property, and receive and appropriate as his own all and singular the income and revenues of said railroad until the entire and full completion of the work or the termination of this contract, but such operation shall be at the risk and cost of the party of the first part.

It is further agreed that the said party of the second part shall, from time to time, on demand and for the accommodation of the party of the first part, execute and deliver to the party of the first part its promissory notes or acceptances to enable him to negotiate loans for the work of construction, or to evidence the purchase of material, right of way, equipment, or to pay for labor to be 316 used in the work; but said notes or acceptances are always on maturity or renewals to be fully paid by the party of the first part, and the railway company forever protected and saved harmless therefrom.

It is further agreed that if said company, before the completion of said northern division, decides to extend its line southwardly from Brazil that, in that case, said party of the first part shall have the right to construct and equip such extensions, and shall receive the same amount and character of payment and compensation as is hereinbefore set out for each mile, viz: twenty thousand dollars in full-paid stock for each mile of main track, twenty thousand 317 dollars per mile in first-mortgage six per cent. bonds, and twenty thousand dollars per mile in income bonds and all the donations that the said party of the second part may procure upon the said southern division.

It is further agreed that if the said party of the first part, at his expense, procures the consolidation of the party of the second part with the Chicago and Block Coal Railroad Company, so as to thereby acquire among other property the completed railway of the said named corporation extending southwardly from Attica, that thereupon the party of the first part shall be allowed and paid upon the main line mileage of said constructed road so acquired the same amount of stock and first mortgage and income bonds and 318 donations as though the said railroad so acquired had been actually constructed by the party of the first part under the terms of this contract.

If at any time during the progress of the work the party of the first part shall be unable to market the first-mortgage bonds hereby agreed to be paid as part compensation at such price as will net him seventy-five cents on the dollar, then the party of the first part shall be entitled, at his option, to stop all further work under this agreement, and declare the same to be terminated, and demand and receive from the party of the second part full payment and settlement in stock, bonds, and donations for all work and labor done, and material, equipment, and right of way furnished up to such

319 notice and termination of this contract, such payments to be for full contract price per mile.

In witness whereof the party of the first part has hereto set his hand and seal and the party of the second part has hereto set the signature of its president and affixed its corporate seal, attested by its secretary, the day and year first above stated.

HENRY CRAWFORD. [SEAL.]
CHICAGO AND GREAT SOUTHERN
RAILWAY COMPANY. [SEAL.]

Attest: By H. M. A. STANLEY.
H. CRAWFORD, JUN., *Secretary*.

320 EXHIBIT B.

UNITED STATES OF AMERICA, }
District of Indiana, } *ss*:

In the Circuit Court of the United States for the District of Indiana.
November Term, A. D. 1884.

THE CHICAGO & GREAT SOUTHERN RAILWAY COMPANY *et al.*
ats.
HENRY H. PORTER.

The separate answer of the Chicago and Great Southern Railway Company, one of the defendants, to the bill of complaint of Henry H. Porter, complainant.

This defendant, now and at all times hereafter saving and reserving to itself all benefit and advantage of exception and otherwise that can or may be had or taken to the many errors, uncer- 321 tainties, and other imperfections in said bill of complaint contained, for answer thereto, or unto so much and such part thereof as it is advised it is necessary or material for it to answer, answering, says that it admits that Henry H. Porter is a citizen of the State of Illinois and a resident of Cook county, in said State, and that all the defendants to said bill of complaint are citizens of the State of Indiana.

This defendant, further answering, says that it admits that on the first day of November, 1881, it was the owner of and engaged in constructing and operating a line of railroad from Fair Oaks, in Indiana, to the city of Brazil, in Clay county, Indiana, and that 322 on said first day of November, 1881, it duly executed and delivered to John C. New, of Indianapolis, Indiana, as trustee, a trust deed or mortgage bearing date the said first day of November, A. D. 1881, by which it conveyed to said trustee its said line of railroad constructed and in course of construction, being the line of railroad described, together with all and singular its right of way, road-bed, tracks, depot, grounds, stations, buildings, and all its property constituting and forming a part of said line of railroad; also its engines, cars, and machinery, as by reference to said Exhibit "A," of

complainants' bill will more fully and at large appear, to se-
323 cure an issue of two million dollars of its bonds, also de-
scribed in said Exhibit "A," of complainants' bill, said bond-
being payable to the order of John C. New and certified to by him
as trustee; that by said trust deed the said bonds became and have
since continued to be a first and paramount lien on all the property
described in said trust deed.

And this defendant, further answering, says that it admits that
in the month of March, 1883, it acquired by consolidation the rail-
road property, franchises, rights of way, equipments, &c., of the
Chicago and Block Coal Railway Company, a line of railroad about
twenty miles in length, extending from Attica to Yeddo, in
324 Fountain county, and that thereafter, on April 9th, 1883,
this defendant, to further secure said bonds, executed and
delivered to said John C. New, as trustee, a supplemental trust deed,
of which Exhibit "B" of complaina-ts' bill is a copy, *from* convey-
ing all of said property it acquired from said Chicago and Block
Coal Railroad Company, to be held by him as further security for
the payment of said two million dollars of bonds, as above men-
tioned, which said trust deed became thereby, and has ever since
continued to be, a first lien upon said property.

This defendant, further answering, says that it admits that after
the execution and delivery of said trust deeds to said John C. New,
as trustee, it issued and negotiated for a good and valuable consid-
eration $1,200,000 of said bonds, and the said bonds were
325 delivered to the purchaser thereof.

This defendant, further answering, says that it admits that the said Henry H. Porter is the holder and owner of all of said 1,200 bonds and the coupons belonging thereto, and that the coupons maturing on July 1st, 1882, January 1st, 1883, July 1st, 1883, January 1st, 1884, July 1st, 1884, and January 1st, 1885, are all past due and unpaid, and that this defendant has no money or property with which to pay said past-due coupons.

This defendant, further answering, says that it admits that said
Henry H. Porter, being the owner and holder of said bonds and
coupons, did in January, 1885, demand in writing of said John C.
New, trustee, that he should proceed to execute the trust
326 of said two trust deeds so executed and delivered to him as
aforesaid, substantially as set forth in complainant's bill of
complaint, and that said New did commence suit to foreclose said
trust deeds and sell said property, but subsequently dismissed his
bill and refused absolutely to protect the rights of said Porter as the
holder of said bonds and coupons, or to have said security in any
way applied to the payment thereof, and has absolutely refused to
take any steps toward the protection of said Porter.

And this defendant, further answering, says that the property
covered by said mortgages is in an unfinished condition, the rail-
road unballasted and in its present condition incapable of
327 paying the expense of operating the same. and that it is in-
adequate security to pay the amount of said $1,200,000 of
bonds, and that this defendant is insolvent and has no other prop-

erty or assets of any kind other than the property covered by said mortgages.

This defendant, further answering, says that it admits that it is provided in said trust deed first mentioned that if the coupons or interest warrants upon said bonds shall be six months in arrears it shall be lawful for said John C. New, trustee, upon written request from the holders of a majority in amount of said bonds at that time outstanding, and upon receiving satisfactory indemnity, to cause all and singular the premises, railway appurtenances, equipments, and franchises conveyed by said trust deed to be sold as an entirety at public auction, to the highest and best bidder, at the city of Chicago, Illinois, upon giving sixty days' notice of the time, place, and terms of sale by advertisement, as set forth in said Exhibit "A," and that upon such sale said trustee should make, execute, acknowledge, and deliver a good and sufficient deed conveying all said railroad property and franchises so sold to the purchaser or purchasers thereof. 328

This defendant, further answering, says that it admits that the said trustee had also the right under said trust deed, after six months' default in the payment of interest or principal of the bonds secured by said trust deed, to institute legal proceedings in any court of competant jurisdiction to foreclose said trust deeds and to procure judicial sale of the property thereby conveyed.

329 This defendant, further answering, says that it admits the default in interest of said bonds, as aforesaid, and admits that the said trustee, John C. New, has refused to take any steps to protect the rights and interests of said complainant or to execute the authority and right given him under said trust deeds, and that a right of action has accrued to the complainant, Henry H. Porter, as the holder and owner of the said $1,200,000 of bonds above mentioned, secured by said trust deeds for the enforcement of the trusts mentioned in the said trust deeds, and to cause the said property covered by said trust deeds to be sold and the proceeds thereof applied in payment of this defendant's indebtedness to him. 330

This defendant, further answering, says that only twelve hundred of said bonds have been issued or are outstanding against it, and that its entire indebtedness secured by said trust deeds is the amount due to said Porter, viz., twelve hundred thousand dollars, and the interest thereon as aforesaid to the amount of over $220,000.

This defendant, further answering, says that it admits that said Porter is entitled to a decree of foreclosure herein and hereby assents to and authorizes this court to enter a decree herein in favor of said Porter for the amount so as aforesaid due him and for a sale of the property mentioned and described in said two trust deeds, and to pay him the said amount. 331

This defendant, further answering, says that there is no other matter or thing in said complainant's bill of complaint contained material or necessary for it to make answer unto and not herein and hereby well and sufficiently answered, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct.

THE CHICAGO & GREAT SOUTHERN
RAILWAY COMPANY,
By EDWARD F. LAWRENCE, *Pres't.*

332 STATE OF ILLINOIS, }
County of Cook, } *ss:*

Edward F. Lawrence, being duly sworn, on oath says that he has read the above answer subscribed by Chicago and Great Southern Railroad Company and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

EDWARD F. LAWRENCE.

Subscribed and sworn to before me this 27th day of May, A. D. 1885.

[NOTARIAL SEAL.] C. B. STANGE.

Endorsed: Filed May 28th, 1885. Henry A. Gardener, sol'r for def't.

333 & 334 To the honorable the judges of said court, in chancery sitting:

Your petitioners, Henry Smith, Robert Cochrane, A. J. McDonald, John W. Mills, Felix Waburten, Frederick Schutz, E. H. Purring, Ellsworth Coal Company, George W. McDonald, James McCarthy, F. H. Peters, C. J. Peters, F. F. Davidson, John Ezinger, E. J. Harty, C. H. Kiff, J. C. Mentzer, George A. Carpenter, and F. F. Lacey, would respectfully show unto your honors that they are judgment creditors, lien-holders and supply claimants respectively of said defendant, The Chicago & Great Southern Railway Company; that they are defendants to said above-entitled cause and have filed their answers and other pleadings in said consolidated cause; that no default has been entered against them or either of them for want of answer or other pleading by said complainant in said foreclosure suit.

Your petitioners further show that at all times during the progress of the litigation in said foreclosure cause they have been represented by counsel and have contested the entry of the decree of fore-
335 closure and sale entered by this honorable court; that said decree was enrolled without the consent of your petitioners or their counsel.

Petitioners further show that they are advised and believe, and so charge the fact to be, that stockholders and other creditors of said defendant railway company, viz., John W. Swan, Aphas Atkinson, and Cleveland Rolling Mill Co. and others, have tendered to this honorable court their certain petition for review and rehearing of the said decree of foreclosure and sale entered by this court, and pray that said decree so entered be opened and set aside for the reasons stated in such petition.

Petitioners, having the same interests as the petitioners praying the review of such decree and being similarly situated, desire to join in such petition, and therefore adopt all and singular the allegations and averments set forth in said petition as their own as though the same had been fully incorporated herein, and ask for the same relief as prayed in said petition and the same benefit as though 336 they had each severally joined directly in such petition; and your petitioners will ever pray.

HENRY SMITH,
ROBERT GOCHRANE & OTHERS.
By McDONALD & MEISEBAR,
Their Solicitors.

Circuit Court of the United States, District of Indiana, *ss.*

George W. McDonald on oath says that he is one of the petition[er]s mentioned in the foregoing petition; that he is also one of the solicitors of record in this cause for said petitioners; that he has read the foregoing petition and that the same is true. Affiant further says that he has also read the petition of John W. Swan, Alphas Atkinson, and others mentioned in the foregoing petition; that the matters and things therein are true in substance and in fact, except such matters mentioned therein upon information and belief of said petitioners, and as to such matters affiant believes them to be true.

GEORGE W. M'DONALD.

Subscribed and sworn to before me this October 13, 1885.

NOBLE C. BUTLER, *Cl'k.*

337 And afterwards, to wit, at the May term of said court, on the 12th day of October, 1885, before the Honorable Walter Q. Gresham and the Honorable William A. Woods, judges as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now H. H. Porter, by McDonald, Butler & Mason and R. B. F. Peirce, and the defendant, by John S. Cooper and Harris & Calkins, and the matter of the petition to set aside the decree entered herein being argued and the court being advised does sustain the same.

And it is ordered and adjudged that said decree herein of date August 17th, 1885, of record in chancery order book No. 13, page 6, be, and the same is, set aside and held for naught; to which ruling said Porter excepts. And it is further ordered that, as to so much of said case as involves the validity of the mortgage and mortgage debts as the same are described in the bill of said Porter and the defendants' answers, the defendants complete the taking of their testimony on or before November 20th, 1885; and that the 338 complainant, Porter, complete the taking of his testimony in rebuttal within ten days thereafter.

And afterwards, to wit, at the May term of said court, on the 23d day of October, 1885, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Henry H. Porter, by his solicitors, and files his replication to the joint answer of Cephas Atkinson *et al.* herein in the words following, to wit:

339 Replication of Henry H. Porter, complainant to the joint answer of Cephas Atkinson and John W. Swan and others, defendants.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

R. B. F. PIERCE AND
McDONALD, BUTLER & MASON,
Sol's for Complainant.

340 And afterwards, to wit, at the November term of said court, on the 29th day of December, 1885, before the Honorable Walter Q. Gresham and the Honorable William A. Woods, judges as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the Smith Bridge Company, by E. W. Tollerton and John S. Cooper, its solicitors, and files its amended intervening petition herein in the words following, to wit:

341 *Amended Intervening Petition of the Smith Bridge Company.*

To the judges of said court:

The Smith Bridge Company, having been made a party herein by order of said court, with leave to file an amended intervening petition, now comes and represents that your petitioner is a corporation duly organized and incorporated under and by virtue of the laws of the State of Ohio, and is a citizen of the said State of Ohio.

And your petitioner further represents that the defendant, The Chicago and Great Southern Railway Company, is a corporation created, organized, and doing business under and by virtue of the laws of the State of Indiana, and was so created and organized with authority to build and operate a railroad in said State; that under and by virtue of the authority so granted the said defendant proceeded to and has constructed, and now operates by a receiver duly appointed by the courts of said State, a line of railroad commencing

at the village of Fair Oaks, in the county of Jasper, in the said
342 State of Indiana, and thence extending through the counties
of Jasper, Newton, Benton, Warren, and Fountain to the village of Yeddo, in said county of Fountain, and has partially built its road from Yeddo to Brazil, said line being entirely within the limits of said State of Indiana.

Your petitioner further says that after the incorporation of said defendant railroad company, as aforesaid, and on the 26th day of October, 1882, your petitioner and said defendant entered into a certain agreement in writing, a true copy of which agreement is attached to this intervening petition, marked Exhibit "A," and made a part hereof; that under and by virtue of said written agreement your petitioner agreed to construct and build for the defendant railroad company, on its line of railway, a certain bridge over and across the Wabash river, in the county of Warren aforesaid, of the pattern, style, and dimensions specified therein, and your petitioner
says that the said defendant railroad company agreed on its
343 part to pay your petitioner for building and constructing
said bridge of the material, style, and dimensions provided for in said contract the sum of thirty-eight dollars per lineal foot, to wit, the sum of thirty-four thousand two hundred dollars. Your petitioner says that said bridge was to be built and completed under the inspection and approval of the chief engineer of the defendant railroad company; that said engineer was to make estimates of the value of the work done and the material furnished for the construction of said bridge each month, and that your petitioner was to be paid by the said defendant railroad company the amount of such estimates so made by said engineer, and as the same were made, less ten per cent. thereof to be retained by said railroad company until the completion of the said bridge.

Your petitioner further says that it furnished the material, constructed and completed said bridge in all respects as required by the
provisions and terms of said contract, and that the said mate-
344 rial and work were inspected and accepted by the chief engin-
eer of said railroad company, and that said bridge, when completed, was in like manner inspected and accepted, and final estimates declared.

Your petitioner further says that it was also agreed by and between your petitioner and said railroad company, under the provisions and terms of said contract, that at the time said bridge should be completed and the final estimates made then the balance due for the construction of said bridge under said contract should be paid to your petitioner, and, upon the payment of said balance of the purchase and construction price of said bridge, the title to said bridge and bridge material should pass to and vest in said railroad company.

Your petitioner says that by the express terms of said contract the title to said bridge and bridge material should be and remain in your petitioner during the construction thereof, and until the contract price should be fully paid, as the sole and individual property of your petitioner; and that, upon a failure or default

345 in the payment of the contract price for said bridge, upon its completion, your petitioner was to have the right to remove said bridge and bridge material.

Your petitioner further says that it has never waived its rights and title to or property in said bridge and bridge material, but, on the contrary, your petitioner, upon the completion of said bridges, to wit, on the 24th day of January, 1884, notified the said defendant railroad company in writing, a copy of which notice is hereto attached, marked "Exhibit B." and made a part hereof, that your petitioner would retain possession and control of said bridge until the purchase price should be fully paid, as provided in said contract, and that said railroad company would not be allowed to use said bridge in the operation of its said road until said payment was fully made, and your petitioner says that whatever possession and use the said railroad company has had of said bridge was and is unauthorized and without the consent of your petitioner.

346 Your petitioner says that there is due and unpaid on the purchase price of said bridge the sum of seventeen thousand three hundred and eighty-seven dollars and fifty-four cents, with in terest thereon at 8 per cent. from March 3rd, 1884.

Your petitioner further says that after the incorporation of said defendant railroad company, as aforesaid, and on the 24th day of July, 1883, your petitioner and said defendant entered into a second and further agreement in writing, a true copy of which agreement is attached to this intervening petition, marked Exhibit "C." and made a part hereof; that under and by virtue of said second agreement your petitioner agreed to construct and build for said defendant railroad company, on its said line of railway, a certain bridge over and across Pine creek, in the county of Warren aforesaid, of the pattern, style, and dimensions specified therein; and your

347 petitioner says that said defendant railroad company agreed on its part to pay your petitioner for building and constructing said bridge of the material, style, and dimensions provided for in said contract the sum of thirty-five dollars per lineal foot, to wit, the sum of five thousand two hundred and fifty dollars.

Your petitioner says that said bridge was to be built and completed under the inspection and approval of the chief engineer of the said defendant railroad company; that said engineer was to make monthly estimates of the value of the work done and the material furnished for the construction of said bridge, and that your petitioner was to be paid by the said defendant railroad company the amount of such estimates so made by said engineer and as the same were made, less ten per cent. thereof to be retained by said railroad company until the completion of said bridge.

Your petitioner further says that it furnished the material, constructed and completed said bridge in all respects as required

348 by the provisions and terms of said contract, and that the said material and work were inspected and accepted by the chief engineer of said railroad company, and that said bridge, when com-

pleted, was in like manner inspected and accepted and final estimates declared.

Your petitioner further says that it was agreed by and between your petitioner and said railway company under the provisions and terms of said contract that at the time said bridge should be completed and the final estimates made then the balance due for the construction of said bridge under said contract should be paid to your petitioner, and that upon the payment of the said balance of the purchase price of said bridge and bridge material the title thereto should pass and vest in said railroad company.

Your petitioner further says that by the express terms of said contract the title of said bridge and bridge material should be and remain in your petitioner during the construction thereof and until
349 the contract price should be fully paid, as the sole and individual property of your petitioner, and that upon a failure or default in the payment of the contract price for said bridge upon its completion your petitioner was to have the right to remove said bridge and bridge material.

Your petitioner says that it has never waived or released its title and right to or property in said bridge and bridge material, but, on the contrary, your petitioner, upon the completion of said bridge, to wit, on the 26th day of January, 1884, notified the defendant railroad company in writing, a copy of which notice is hereto attached, marked Exhibit "B," and made a part hereof, that your petitioner would retain possession and control of said bridge until the purchase price should be fully paid, as provided in said contract, and that said railroad company would not be permitted to use said bridge in the operation of its said road until said purchase price should be fully paid; and your petitioner says that
350 whatever possession and use the said railroad company has had of said bridge was and is unauthorized and without the consent of your petitioner.

Your petitioner says that there is due and unpaid on the purchase price of said bridge the sum of four thousand and fifty dollars, with interest thereon at eight per cent. from March 3rd, 1884.

Your petitioner further charges upon information and belief that the complainant, Henry H. Porter, who now claims to own and hold the bonds of said defendant railroad company, acquired whatever interest he may have in said bonds with full knowledge that said defendant railroad company had not paid for and had not acquired the title to said bridges, and that your petitioner was the builder and owner thereof, and that said Porter, before he purchased or owned said bonds or obtained any interest therein, had possession and knew the terms of the said contracts between your petitioner and the said Chicago and Great Southern Railway Company.

Wherefore your petitioner prays that the court may take an
351 account of and determine the amount due and owing to your petitioner for the construction and purchase price of said bridges aforesaid; that the right and title of your petitioner in and to said bridges and bridge material may be protected and declared by this court to be superior to all claims of all other parties;

that the amount due your petitioner for the construction of said bridges may be declared and decreed to be a lien not only upon said bridges, but as well upon the entire railroad, together with all its equipments; that the priorities of the various liens [and] equities in and to said railroad property may be determined and adjusted, and that said railroad line, together with all the appurtenances and equipments thereunto belonging, may be ordered to be sold according to law and the proceeds thereof distributed according to law and equity, and for all such further and other relief in the premises as the nature of the circumstances of this case may require and to this honorable court shall seem meet. 352

E. W. TOLERTON,
Solicitor for the Smith Bridge Co.

JOHN L. COOPER,
Of Counsel.

UNITED STATES OF AMERICA, *District of Indiana.*

STATE OF OHIO,
Lucas County, } *ss:*

Wm. S. Daly, being duly sworn, says that he is secretary of the Smith Bridge Company, the above petitioner; that he is acquainted with the contents of the foregoing intervening petition, and that the matters and things therein stated are true in substance and in fact.

WM. S. DALY.

Sworn to and subscribed before me this 15th day of December, 1885.

H. F. SHUNCK,
Notary Public, Lucas County, Ohio.

353 EXHIBIT "A."

This agreement, made and entered into this 26th day of October, 1883, by and between the Smith Bridge Company, of Toledo, Lucas county, in the State of Ohio, party of the first part, and the Chicago and Great Southern railway, a corporation formed under and pursuant to the laws of the State of Indiana, party of the second part, witnesseth: That whereas the party of the first part has this day and does by these presents contract and agree to construct and build for the party of the second part a bridge over and across the Wabash river at or adjacent to the town or city of Attica, in the State of Indiana, consisting of six (6) spans of one hundred and fifty (150) feet each, of the pattern and style known as the Pratt combination truss, with the Smith improvement, of the capacity of thirty-five hundred (3,500) pounds per lineal foot on a factor safety of five (5), all in accordance with the plans and specifications hereunto attached, marked Exhibits "A" and "B," and referred to and made a part of this agreement, to be fully completed, including the track stringers ready to receive the ties and placed upon the piers and abutments prepared to receive the bridge constructed by the party of the second part in [the] Wabash river at 354

Attica aforesaid; for which bridge [the] said party of the first part is to receive the sum of thirty-eight ($38.00) dollars per lineal foot, making the sum of thirty-four thousand and two hundred ($34,200) dollars for said bridge, upon the terms and conditions hereinafter contained.

And the party of the second part agrees upon its part to pay said party of the first part said sum of thirty-eight ($38.00) dollars per lineal foot, or in all the sum of thirty-four thousand and two hundred ($34,200.00) dollars, for such bridge, it being understood that said bridge is to be in all respects first class, and to be made of good material, subject to inspection and approval of the engineer in charge of said work. Payments to be made as follows, except otherwise agreed by the parties hereto:

355 On or about the first of each and every month the party of the second part shall, by its chief engineer, cause estimates to be made of the amount and value of the bridge material and work done on the same, delivered at the place of the erection of said bridge, and also estimates of the amount and value of the bridge as placed in position; and the party of the second part shall pay the value of such estimates, less ten per cent. retained until the bridge is fully completed, and the money due on such estimates to be paid on or about the 15th of each month; upon final estimate and completion of the bridge *and* balance due thereon is to be paid in accordance with the foregoing contract and price of said bridge, at which time the title of said bridge is to vest in said party of the second part: but during the construction of said bridge and until the contract price shall have been fully paid the title of said bridge and bridge material
shall be and remain in [the] party of the first part as their in-
356 dividual property, and in default of payment of the contract
price of said bridge the party of the first part reserves the right to remove said bridge and bridge material.

CHICAGO & GREAT SOUTHERN
RAILWAY COMPANY.
By H. CRAWFORD, Jr., *Sec'y & Treas'r.*

357 EXHIBIT "B."

To Henry Crawford, president, and F. H. Peters, engineer, of the Chicago and Great Southern Railway Company:

You are hereby notified that the Smith Bridge Company will retain possession of the bridges built by said company on the line of said railroad over Pine creek and the Wabash river, in the State of Indiana, until said bridges are entirely paid for, as provided in the contract.

And said railroad company is hereby notified that it is not allowed to use said bridges in the operation of its road until the payment for bridges is fully made.

January 24th, 1884.

THE SMITH BRIDGE COMPANY.
By —— ——.

Served a copy of this notice on said Henry Crawford, Sr., president, this 26th day of January, 1884.

P. E. LANE.

Subscribed and sworn to before me this 25th day of January, 1884.

D. HARRY HAMMER,
Notary Public.

358 EXHIBIT C.

This agreement, made and entered into this 24th day of July, 1883, by and between the Smith Bridge Company of Toledo, Lucas county, in the State of Ohio, party of the first part, and the Chicago and Great Southern Railway Company, a corporation formed under and pursuant to the laws of the State of Indiana, party of the second part, witnesseth:

That whereas the party of the first part has this day and doth by these presents contract and agree to construct and build for the party of the second part a bridge over and across Pine creek at or near the town or city of Attica, in the State of Indiana, consisting of one (1) span of one hundred and fifty (150) feet, of the pattern and style known as the Pratt combination truss, with the Smith improvement, of the capacity of thirty-five hundred (3,500) pounds per lineal foot, and a factor safety of five (5), all in accordance with the plans and specifications hereunto attached, 359 which are to be a duplicate of the spans erected over the Wabash river at Attica, Indiana, built by the Smith Bridge Company; for which bridge the party of the first part is to receive the sum of thirty-five ($35.00) [dollars] per lineal foot, making the sum of fifty-two hundred and fifty ($5,250.00) dollars for said bridge, upon the terms and conditions hereinafter contained; and the party of the second part agrees upon its part to pay said party of the first part said sum of thirty-five ($35.00) [dollars] per lineal foot, or in all the sum of fifty-two hundred and fifty ($5,250.00) dollars, for said bridge—

It being understood that said bridge is to be in all respects first class and to be made of good material, subject to inspection and approval of the engineer in charge of such work. Payments 360 to be made as follows, except otherwise agreed by the parties hereto: On or about the first of each and every month the party of the second part shall by its chief engineer cause estimates to be made of the amount and value of the bridge material and work done on the same, delivered at the place of the erection of said bridge, and also estimates of the amounts and value of the bridge as placed in position, and the party of the second part shall pay the value of such estimates, less ten per cent. retained until the bridge is fully completed, and the money due on such estimates to be paid on or about the 15th of each month. Upon final estimate and completion of the bridge the balance due thereon is to be paid in accordance with the foregoing contract and price of said bridge, 361 at which time the title of said bridge is to vest in said party of the second part; but during the construction of said bridge and until the contract price shall have been fully paid the title of said bridge and bridge material shall be and remain in the party of the first part as their individual property, and in default of the payment of the contract price of said bridge the party of the first part reserves the right to remove said bridge and bridge material.

CHICAGO AND GREAT SOUTHERN
RAILWAY COMPANY,
By HENRY CRAWFORD, *Pres.*

362 TOLEDO, OHIO, *Feb'y 1st*, 1884.

C. and G. S. R'y Co. to The Smith Bridge Co.:

July 15th, 1883.	To June estimate due July 15th, '83	$8,100 00
Feb'y 1st, 1884.	" int. on $8,100.00 to date, 6½ mos., 8%.	351 00
Sept. 15th, 1883.	" August estimate due Sept. 15th, '83	3,510 00
Feb'y 15th, 1884.	" int. on $3,510.00 to date, 4½ mos., @ 8%	105 30
Oct. 1st, 1883.	To final estimate due Oct. 1st, '83	5,040 00
Feb'y 1st, 1884.	" int. on $5,040,00 to date, 4 mos., @ 8%	134 40
Feb'y 1st, 1884.	To balance due on account of single span, being 150 ft. @ $34.50 p'r foot = $5,175.00, less cash $1,000.00	4,175 00
Feb'y 1st, 1884.	To 4,426 ft. (B. M.) stringer- @ 17.00 per M.	75 24
	Due February 1st, 1884	$21,490 94

R'c'd of H. Crawford his check for twenty-one thousand six hundred thirty-seven & $\frac{54}{100}$ dollars, which when paid is to be received in full settlement of the above ac., with interest.

THE SMITH BRIDGE CO.,
By E. W. TOLERTON, *Its Att'y.*

3-3-'84.

363 And afterwards, to wit, at the November term of said court, on the 8th day of January, 1886, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings were had in the above-entitled cause, to wit:

364 It is ordered that William P. Fishback, Esq., the master in chancery of this court, from the report already made by the receiver herein and reports which shall hereafter be made, as well as from other sources and testimony, report at the earliest practicable time the amount of rolling-stock of every character and description now in the possession or control of said receiver; under what contracts or authority he procured such rolling-stock or now retains possession or control of the same; also the amount expended by said receiver since his appointment in grading and otherwise improving said railway; the amount of receiver's certificates which have been issued by said receiver and the total indebtedness he has contracted as such, together with his total receipts for earnings.

365 And it is further ordered that said receiver do appear before said master and furnish all information, by reports or otherwise, required in connection with this order.

And afterwards, to wit, at the November term of said court, on the 9th day of February, 1886, before the Honorable Walter Q. Gresham and the Honorable William A. Woods, judges as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Now comes William P. Fishback, master in chancery, and files his report of evidence taken herein pursuant to the order of this court, entered January 8th, 1886, in this cause.

(See page 570.)

And afterwards, to wit, at the November term of said court, on the 16th day of February, 1886, before the Honorable Walter Q. Gresham and Honorable William A. Woods, judges as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

366 *Foreclosure Decree.*

This cause came on further to be heard at this term before Hon. Walter Q. Gresham, judge of the circuit court of the United States for the seventh circuit, and Hon. William A. Woods, judge of the district court of the United States for the district of Indiana, sitting together, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed by the court, the district judge dissenting in part, as follows, viz:

First. That the relief prayed by the answer of Swan and Atkinson, as stockholders, be, and the same is hereby, denied, and that the petition of said Swan and Atkinson as stockholders be, and the same is hereby, dismissed, and the question of the taxation of costs against them is hereby reserved.

Second. That the defendant, The Chicago & Great Southern Railway Company, by the order and direction of Henry Crawford, on or about the first day of November, A. D. 1881, caused to be prepared for execution two thousand (2,000) bonds, numbered from one (1) to two thousand (2,000), both inclusive, each for the sum of one thousand dollars ($1,000), payable in gold coin of the 367 United States, on the first day of January, A. D. 1912, with interest payable in gold coin of the United States, at the rate of six per cent. per annum, payable semi-annually on the first days of January and July of each year, such interest being evidenced by interest coupons attached to said bonds when produced at the hearing of this cause.

That twelve hundred of said bonds were, by the said Chicago and Great Southern Railway Company, executed, issued, and delivered to Henry Crawford; that one thousand thereof were to be accounted for by said Crawford under the construction contract introduced in evidence in this cause, and that two hundred of said bonds were delivered to said Crawford under said construction contract; that said twelve hundred bonds were, by said Crawford, sold and delivered to the complainant, Henry H. Porter, and his associates, who now own and hold the same, and that the remaining eight hundred of said bonds never have been issued.

Third. That, to secure the payment of said bonds and the interest coupons thereto attached, the said railway company, to wit, on the first day of November, A.D. 1881, by the order and direction of said Henry Crawford, executed and delivered to John C. New, 368 as trustee, a mortgage or deed of trust of even date with the said bonds, in and by which the railway company conveyed to said trustee all and singular the northern division of the railway of said railway company, then constructed or thereafter to be constructed, between Brazil, Clay county, Indiana, extending thence northwardly through the counties of Clay, Parke, Fountain, Warren, Benton, Newton, and Jasper to a junction with the Louisville, New Albany and Chicago railway at or northwest of Rensselaer, Indiana, being about one hundred miles in length, together with the rights of way, road-bed, made or to be made, its track, laid or to be laid, between the terminal points aforesaid, together with all stations, depot grounds, rails, fences, bridges, sidings, engine-houses, turntables, machine-shops, buildings, erections, coal lands, and contract rights in any way then or thereafter appertaining to said described division of railroad, together with all the engine-houses, machinery, supplies, tools, and fixtures then or thereafter owned or acquired by said railway company for use in connection with said division of said railroad, together with all and singular the powers and 369 franchises thereto belonging, and the tolls, income, and revenue to be derived therefrom, which said mortgage or deed of trust was thereafter duly recorded according to law in the counties of Jasper, Newton, Benton, Warren, Fountain, Parke, and Clay, in said State of Indiana.

That afterwards, on April ninth, 1883, the said The Chicago and Great Southern Railway Company, by the order and direction of said Henry Crawford, executed a second-mortgage conveyance or deed of further assurance to said trustee, John C. New, conveying to him all its interest, right, and title in and to the railroad and property acquired by it from the Chicago and Block Coal Railroad Company, and from consolidation therewith, to further secure the payment of said bonds and said interest thereon, therein and thereby confirming in all respects the said original mortgage or trust deed of November 1, 1881, and conveying to the said trustee for the uses and purposes of said trust all and singular the property and railway then constructed, or thereafter to be constructed, and all franchises, rights, and privileges, upon the terms of and in as full and perfect degree as mentioned and set forth in said original mort- 370 gage or trust deed, which said mortgage, conveyance, or deed of further assurance was thereafter duly recorded, according to law, in the counties of Fountain, Parke, and Clay, in the said State of Indiana.

Fourth. That in and by said mortgages or deeds of trust it was and is, among other things, provided that after six months' default in the payment of any installment of interest upon said bonds in said mortgages or deeds of trust mentioned, or in the payment of the principal of any of said bonds secured by said mortgages or deeds of trust,—and procure judicial sale of the property therein and thereby conveyed; that said railway company defaulted in the payment of the installment of interest due upon its bonds outstanding on the first day of July, A. D. 1882, proper demand being made therefor, and has from said first day of July, 1882, remained in default, having paid no interest upon any or either of the bonds secured by said mortgages or deeds of trust from and after said date down to the present time; that there is now due and unpaid of said interest in default upon said bonds issued and outstanding for value the sum and amount of two hundred and ninety-one thousand eight hundred and sixty dollars ($291,860); that the principal of said bonds issued and outstanding is the sum and amount of one million two hundred thousand dollars ($1,200,000). 371

Fifth. That said mortgages or deeds of trust are valid and binding obligations as against said railway company, and are a superior and paramount lien upon all the railway property, lands, rights, privileges, immunities, and franchises therein mentioned and described and thereby conveyed, excepting as hereinafter provided.

Sixth. That all unpaid valid claims against said railway company, accrued for right of way, lands, labor, rolling-stock, and material used in the construction and betterment of said railway, whether reduced to judgement or remaining in open account, are hereby adjudged and decreed to be prior, superior, and paramount to the lien of the said mortgages or deeds of trust and the bonds secured thereby; that all unpaid valid claims for labor, supplies, rolling-stock, and material used in the operation of said railway prior to the appointment of a receiver, whether reduced to judgement or remaining in open account, are hereby adjudged and decreed to be prior, superior, and paramount in lien to the said lien of said mortgages or deeds of trust and the bonds secured thereby; and all of said claims accrued in the construction of said railway and its betterment and all of said claims accrued in the operation of said railway prior to the appointment of a receiver, as hereinabove in this paragraph of this decree described, are hereby adjudged and decreed to be prior, superior, and paramount in lien to the lien of any and all receiver's certificates issued under the orders of this court in this cause, excepting only receiver's certificates to the amount of twenty-three thousand dollars ($23,000), issued under the order of this court of April 29th, A. D. 1885, the proceeds of said certificates other than said twenty-three thousand dollars ($23,000) representing construction or betterment of said railway. 372

Seventh. That all court and receiver's indebtedness accrued against said property since the appointment of a receiver is hereby adjudged and decreed to be prior, superior, and paramount in lien to the lien of said mortgages or deeds of trust and the bonds secured thereby.

Eighth. It is hereby further ordered, adjudged, and de-
373 creed that the defendant, The Chicago & Great Southern
Railway Company, do pay or cause to be paid to the complainant the said sum of two hundred and ninety-one thousand eight hundred and sixty dollars ($291,860) due upon interest in default of such payment; that the said mortgages and deeds of trust be, and they are hereby, foreclosed, and that the equity of redemption of said defendants herein in and to said mortgaged property and every part thereof be forever barred and foreclosed; and that all and singular the said railway and property covered and conveyed by said mortgages or deeds of trust and each of them, namely, the railway property, rights, and franchises hereinabove described, together with all the rights, privileges, immunities, franchises, and property and appurtenances thereof and thereto appertaining, and all the right, title, interest, and equity of redemption of the said The Chicago and Great Southern Railway Company, and each and every of the defendants herein, be sold, free from all appraisement or valuation laws, as an entirety, it being hereby decreed that the said property and railroad is not susceptible of division without injury to and diminution of the value thereof, by William P.
374 Fishback, master in chancery of this court, at public auction,
to the highest bidder therefor, at the door of the United States circuit court room in the city of Indianapolis, in the State of Indiana, after having first given notice of the time, place, and terms of sale, and a description of the property to be sold by advertisement thereof in one public newspapers published in the city of Indianapolis, in the State of Indiana, and in one public newspaper published in the city of Chicago, in the State of Illinios, once a week for the space of thirty days prior to such day of sale, and that at such sale the complainant herein or any of the parties in this cause may become the purchaser.

That said master shall require a deposit of fifty thousand dollars ($50,000) to be made by each and every bidder before receiving any bid from such bidder at said sale, which deposit shall be absolutely forfeited to the use of the trust herein if the bidder to whom the property shall be struck off shall fail to pay or complete the said purchase in accordance with the terms of this decree.

At such sale of said railway and property the said master
375 shall not receive or cry any bid for a sum less than five
hundred thousand dollars ($500,000). Upon confirmation of the sale, the balance of the purchase-money bid in addition to said sum of fifty thousand dollars, as hereinbefore provided, shall be paid by the purchaser into the registry of this court, unless it is then otherwise ordered, adjudged, and decreed by the court; and that upon the full performance by said purchaser of the orders and decrees of the court in that behalf hereafter entered, the said purchaser shall be let into the possession of said property and shall receive a good and sufficient deed therefor, in which the said railway company and said John C. New, trustee, shall unite with said master.

Ninth. It is further ordered, adjudged, and decreed that a reference be made to the master, William P. Fishback, to take testimony and report his findings, as follows:

1. The amount the receivers have expended in the construction, improvement, or betterment of said railroad, including the debts incurred therefor and not yet paid.

2. The amount expended by the receivers in the operation of said railroad, including the debts incurred therefor and not yet paid.

376 3. The total amount of earnings received by said receivers in the operation of said railroad.

4. The amount of outstanding receivers' certificates issued under the orders of this court, and how and for what purpose the proceeds thereof were expended.

5. The amount due the several claimants under the sixth paragraph of this decree, showing the amount due each claimant and the aggregate amount due upon each of the two classes of the claims mentioned in said sixth paragraph.

And that said master report his findings, with the testimony taken by him on this reference, on or before the day of confirmation of the sale made hereunder.

And the complainant herein, Henry H. Porter, here now excepts to all those parts of this decree ordering, adjudging, and decreeing the two classes of claims mentioned and described in the sixth paragraph of this decree, to wit, claims accrued for construction and betterments, and claims accrued for the operation of said railway prior to said receivership, to be prior, superior, and paramount to the lien of said mortgages, or deeds of trust, and prior, superior, and paramount to the lien of all receivers' certificates 377 issued under the orders of this court in this cause, excepting only the receivers' certificates issued under the order of the court of April 29th, A. D. 1885.

And said complainant further excepts to all that part of the second paragraph of this decree by which it is ordered and decreed that the twelve hundred bonds were, by the said Chicago & Great Southern Railway Company executed, issued, and delivered to Henry Crawford; and to that part of said paragraph of said decree by which it is decreed that one thousand of said bonds were delivered to Henry Crawford to be accounted for by him under said construction contract. And complainant further excepts to all that part of said second paragraph of said decree by which it is decreed that all of said twelve hundred bonds were sold and delivered by Henry Crawford to the complainant, H. H. Porter, and his associates; and complainant also excepts to all that part of the second paragraph of said decree in which it is decreed that the defendant, The Chicago and Great Southern Railway Company, prepared for excution and issued its said bonds by the order and direction of Henry Crawford.

378 And complainant excepts to all that part of the third paragraph of this decree by which it is decreed that the mortgages by this decree foreclosed were executed and delivered by the order and direction of Henry Crawford. And complainant especially ex-

cepts to the sixth paragraph of this decree and all of its provisions, and to the said above-named portions of the second and third paragraphs of said decree. And complainant, Henry H. Porter, here now prays an appeal from said parts of said decree so as above excepted to by him to the Supreme Court of the United States, which is granted upon giving bond to the satisfaction of the court.

And the said John H. Swan and Cephas Atkinson, defendants, except to the first paragraph of this decree, denying them the relief prayed for and dismissing their said petition; and also except to all those parts of said decree awarding to said Porter a claim of indebtedness against said railway company on account of said interest coupons and establishing the said two mortgages mentioned in the pleadings in said cause as a lien upon said property; and also as to those parts of said decree adjudging and decreeing a foreclosure of said mortgage and a sale of said property thereunder.

And the said defendants, Swan and Atkinson, pray an appeal from this decree to the Supreme Court, which is granted upon their giving bond to the satisfaction of the court.

379 *Opinion of Woods, J., Dissenting.*

Judges Gresham and Woods sitting together, Woods, J., dissenting:

In respect to the position of Swan and Atkinson in the case there is no difference of opinion. They were allowed to intervene upon a showing that as tax-payers of townships which voted aide to the construction of the railroad they with other tax-payers were entitled to stock in the R. R. company to the amount of $40,000 or more, and that for the protection of their own and the rights of other tax-payers they desired to file proposed answers; but the proof shows conclusively that their petition was not true nor presented in good faith but collusively for the purpose of aiding general unsecured creditors of the railroad company to resist the foreclosure of the complainant's mortgage. Besides this Swan was a director and consented to the corporate acts now brought into question. He ought not to complain of his own acts. These parties dismissed from view, the case is one between the complainant as holder of the mortgage bonds and other creditors, some of whom have taken judgements against the railroad company, and others have
380 demands for labor, supplies, or material furnished in and for the construction or operation of the road before the appointment of the receiver. All these claims, however, accrued after the recording of the mortgages.

That the mortgage is valid in the hands of the complainant and as against the railroad company, the court is agreed; but upon the question whether or not the mortgage lien has priority over the claims of these creditors, whether general or special, there is a difference of opinion, the circuit judge holding that mere general creditors are entitled to preference, and my view being that the mortgage must prevail against all whose claims are not for labor done or material and supplies furnished in and for the operation of the road

during the period of six months next before the appointment of the receiver. The claims of some of these creditors have been put into judgement in the State courts, but as that was done after the execution of the deeds of trust and the delivery of the bonds to purchasers for value the judgements confer no additional right of preference. In behalf of one or two claims special equities are asserted which may deserve consideration, and there may be claims for right of way which are entitled to be preferred. The facts of the case, generally stated, are these: The Ch. and Gr. S. R'y Co. was organ-
ized with Foster as president and controlling stockholder.
381 The stock issued has been all paid for in full by expenditures
for right of way, construction, and Foster's personal services.
Crawford, being the owner by purchase of the stock (paid up) of the Block Coal Railroad in extension of which the Ch. and Gr. S. was proposed to be built, bought Foster's stock, and thereby became the controlling or dominating stockholder of that enterprise. But Foster, as president, and his board of directors continued for some months to hold their offices in the corporation, and Crawford having expended in the meanwhile large sums in the construction of the road, perhaps $200,000 or $300,000, besides the $200,000 which he had paid and agreed to pay for the Block Coal road, requested, and after being once refused procured (I have seen no evidence that he ordered and directed), the president and trustees to enter into a formal contract with him for the construction of the Ch. and Gr. S. road, and in aid of the scheme to execute the bonds and trust deeds or mortgages now in suit, the second deed, including the Block Coal road as well as the Ch. and Gr. S., the two corporations having in the meantime been consolidated into one. Before this consolidation, however, and before the demands of these creditors had
originated the bonds, as described in the first deed of
382 trust, has been signed to the amount of $1,000,000 and de-
livered to Crawford, not as his own absolutely, but with directions to apply the bonds or proceeds, first, to the payment of the balance due Dull and McCormick for the stock of the coal road; second, to the reimbursement of his outlays upon construction, and, third, to the final or further completion of the road. The bonds had no market value, and Crawford was compelled to pledge them all, together with the stock of the company, with Dull and McCormick to secure the payment of the balance due them for the stock of the Block Coal road; and afterwards, in order to obtain money to redeem this pledge, the two companies were consolidated, new stock of the consolidated company to the amount of $1,200,000—in lieu of the paid-up stock of the original companies—issued, and this stock and the bonds were pledged to Drexel, Morgan & Co. to secure a loan of $400,000, evidenced by Crawford's individual note to them for that amount, Crawford agreeing, at the same time, to expend upon the construction of the road $50,000 more of his own means, and that the money of Drexel, Morgan & Co., after the payment of
$115,000 and interest yet due to Dull & McCormick, should
383 be expended in or towards the completion of the mortgaged
road, under the supervision of an agent appointed by D., M.

& Co. Under this arrangement Crawford expended $50,000 or more, as agreed, and D., M. & Co. advanced $350,000 by paying to Dull & McCormick their demand and by expending the remainder in the manner stipulated upon the construction of the road. Drexel, Morgan & Co. received the bonds and stock directly from Dull & McCormick, not from Crawford. It may be here observed (though I do not deem it essential to my conclusion) that, if the forms of transactions are to be disregarded and the substance of things only looked at, this was in fact a loan by D., M. & Co. to the railroad company, and Crawford's note was only a collateral evidence of and security for the debt, and, the construction contract out of the way, he would have been entitled, upon making payment of his note, to reimbursements by the company and to hold the bonds as security. Additional bonds to the amount of $200,000 were afterwards issued to Crawford and by him delivered to D., M. & Co. in pledge with the other securities; and thereafter Crawford, by an assignment in writing, gave to the First National Bank of Chicago a second lien upon or pledge of the same securities to
384 secure the payment of an indebtedness of $250,000 or more,
which he owed that bank. The complainant Porter was interested. The debt to D., M. & Co. having become due, and Crawford not having means of payment, Porter, in order to protect the bank and as a business venture, with the consent of Crawford, paid to D., M. & Co. the amount due them, about $392,000, and cancelling Crawford's note to D., M. & Co. took the collaterals and held the same for the amount paid to D., M. & Co. and the bank debt, aggregating about $700,000. This being the situation, the agreement between Crawford and Porter and associates was made, whereby in terms Crawford sold and Porter purchased of him as if they were his the bonds and stock. But, disregarding form, the fact and substance of the transaction was an agreement for the extinguishment of Crawford's right to redeem the securities from pledge, the stipulated consideration being that Crawford should have a share in the proceeds over a sum named, to be derived from a foreclosure and sale of the property under the mortgage, the syndicate agreeing—

"To pay and clear off any and all claims against said railway company which may be decided by the court to be liens upon
385 the said line of railway paramount to the lien of the bonds
and coupons secured by the trust deed to said John C. New, dated November 1, 1881, or which the court may decide shall be equitably payable out of the proceeds of the sale of said line of railway prior to any payment of the said bonds or coupons, including," &c., and Crawford agreeing and guaranteeing that such claims should not exceed $100,000.

At or near the same date the syndicate agreement between Porter and associates was made, whereby, as the court is agreed in holding, Porter was made trustee for his associates, and as such is entitled to maintain this action in his own name alone.

There is no allegation or proof of any actual fraud or fraudulent intent on the part of any one in any of these transactions, except that it is claimed that the construction contract between the railway

company and Crawford is illegal and fraudulent upon its face, and by reason of the fact that Crawford owned the stock of the company and dominated the board of directors at the time when the contract was made. The objections made to the construction contract do not seem to me of much weight in themselves, and in respect to the questions now presented to have no significance. The substance of that contract is that, in consideration of the bonds and
386 stock which Crawford was to receive, he bound himself not only to complete but to equip the road. The evidence shows that he failed to fully perform this contract, but it does not show that the contract itself was unfair, and surely partial failure of performance is no ground for denying relief upon the contract in so far as it was performed. It is not alleged nor shown that Crawford is or was at any of the times in question insolvent or not possessed of ample means to pay all liabilities, unless that must be inferred from the fact that he had not ready money to pay Dull & McCormick and Drexel, Morgan & Co. when their respective demands became due. The question upon these facts is: Do these mortgage bonds, conceded to be valid and binding upon the corporation, constitute a lien prior to claims of mere general creditors who did labor or furnished material in aid of the construction of the road? If not, it must be for extraordinary reasons and upon a theory of equity for which I know of no precedent.

Two lines of argument have been advanced—first, that forms must be disregarded and substances alone considered, and that, this done, the corporation was only a name, the real ownership of
387 the property in Crawford, and whenever the corporate name was used is to be considered as meaning Crawford; second, that the transactions in question were in fact as well as in form corporate doings, and the rights of parties to be determined accordingly. These theories are so far distinct and inconsistent as to require separate consideration, and it hardly need be suggested that it will not do at any stage of the discussion to pass from one to the other in order to obviate objections to either.

If the first proposition be accepted as true for the sake of the argument (and as I understand it is this view which prevails), Crawford owned the property, and the corporate name whenever used must be deemed to have the same significance as if he had used his own name. The facts then are that Crawford owned the projected road, and in order to obtain money to prosecute the enterprise prepared bonds and executed trust deeds to a second party to secure the payment of the bonds and caused the deeds to be recorded. He retained the bonds for a time in his own possession, in the meanwhile prosecuting the work of construction. He thus delivered the bonds in pledge for the payment of the debt to Dull & McCormick and afterwards to Drexel, Morgan & Co. for a loan of $350,000, which were laid out upon the road, as already stated.
388 He then gave a second and subordinate lien to secure the bank debt for $250,000, and finally, in order to pay both debts and save for himself and his creditors what he might, transferred "all his right, title, interest, and property * * * in and

to the said bonds and the said railway stock" to Porter and associates.

Now, upon this theory the bonds in Crawford's own hands, of course, evidenced no debt or obligation, but, once he had delivered them for a consideration of value to a third person, they became effective and binding, and the mortgage likewise took effect as a security; and it is immaterial whether the bonds be considered as negotiable or non-negotiable by the law merchant. There arises here no question of a good-faith purchase, there being no pretense that any of these transactions were tainted with an intent to defraud creditors. The owner of property, though indebted for it *or* to those who helped construct or create it, may make a mortgage which shall be good against all who have acquired no lien. Crawford did no more. So, also, it is not material whether Dull & McCormick or Drexel, Morgan & Co., or Porter and associates, knew of Crawford's indebtedness to those claimants, because that 389 fact was no obstacle in the execution of the bonds and mortgage; and it is not material whether D., M. & Co. be regarded as having derived title through Dull & Mc[Cormick] and Porter through D., M. & Co., or each of these directly from Crawford, because the transaction with each may stand by itself as a direct execution and delivery of the bonds and mortgage upon a consideration then passed. Neither is injustice done to any of these creditors, because they gave credit after the mortgage had been recorded, and presumably with knowledge of its existence. Indeed, it is shown that one of them received in part payment of his claim a large sum of the money loaned by D., M. & Co., and many of them admit that they knew of the mortgage when they gave the company credit. Upon this theory the corporate stock cuts no figure. There being no corporation, there can be no stock.

With this I drop the individual or non-corporate theory of the case. It is manifestly false in fact, but if conceded the validity and priority of the mortgage, upon the plainest principles of familiar and daily application, remain beyond dispute.

Turning to the other view, we have to do with a corporate existence, real and substantial, as well as formal. So all the par- 390 ties treated in all these transactions which are now brought under review, and so must we treat it, as I think, in order to reach either a just or equitable conclusion. I do not disguise or evade the fact that Crawford became and continued to be the owner of all the corporate stock that had been actually issued, and so had power to elect and did elect directors of his own choice. This, however, did not invalidate nor change the character of the corporate action, as is shown by the decision in Pullman's Palace Car Company *vs.* Railway Co., 115 U. S., 587.

But, for the sake of argument, I am willing to concede that Crawford had and constantly exercised control over the board of directors, though it is a mistake of fact to say that he was the sole owner of the corporate stock or property. He obtained of Foster stock in the original corporation to the amount of $60,000, being the entire amount issued, and including a few shares of assessible stock, which

last, however, were not transferred until a later date; but
391 township aids had been voted and paid in sums aggregating
more than $40,000, and under the statutes of the State the
tax-payers of these townships were and are yet entitled (as has been decided in this case) to claim stock in the company in amounts equal to the taxes so paid, and this right, it is conceded, I think, extends to a proportionate share of the stock of the consolidated company.

Therefore (leaving out of view the Block Coal road), when the construction contract was made and the bonds and mortgage executed, Crawford, though we concede him to have been in full control of the corporation, did not own the entire interest in the property and never afterwards acquired it. On the contrary, he owned little more than a half interest. Now, what bearing have these facts on the question before us?

As between Crawford and the corporation, notwithstanding his control of the board of directors, I am willing to concede that he could enforce his construction contract and the bonds and mortgage, if they had remained in his hands, only to the extent of actual performance at a fair valuation of the work done and benefits conferred upon the company.

To that extent it seems to be established that relief could be given him (Thomas *vs.* R. R. Co., 109 U. S., 522), and, I suppose, it would make no difference with this proposition if, instead of half, Crawford had, in fact, been owner of the entire capital stock of the company.

Certainly those who gave the corporation credit after the execution and recording of the mortgage should not complain if the security be enforced to the extent of values actually received of Crawford by the company. But, instead of this, the mortgage and
392 bonds, according to the prevailing opinion, are to be declared
totally void as against such creditors; and besides and beyond that Crawford's claim is not to stand on an equality with others as unsecured, but must be postponed entirely, because it is said he was improving his own property, and therefore not entitled to reimbursement. This reasoning overlooks or ignores the fact that we are dealing with corporate, not individual, property, and that the court, having taken possession of it as a fund, will divide it equitably between all creditors unless some have acquired rightful priorities. It is clear that Crawford contributed to this fund more than any other, and with greater loss to himself, and, even if not allowed to hold his mortgage, it is difficult to see why he is not entitled to share proportionately with other creditors; that is, would he, if he had not transferred his rights? The case, however, is not between Crawford and other creditors. The bonds and mortgage were lawfully executed and placed in Crawford's hands, either as owner or with authority to negotiate. The bonds are negotiable in form. They were pledged to Dull & Mc. before the claims of these creditors originated; but if that had been otherwise it would make
no difference. Notwithstanding its indebtedness, the corpo-
393 ration had the same right as an individual to put out its
bonds and to secure their payment by mortgage upon its

property and franchises; and in this view, as explained when considering the other theory of the case, the successive transactions by which the bonds came to the possession of the complainant are unimpeachably valid. Besides, the plain fact is that Dull & Mc., D., M. & Co., and Porter and associates were respectively purchasers in good faith of mercantile paper, and are entitled to protection accordingly. No fact is shown which, in my judgement, casts any taint upon the paper; and if there be such facts it is not shown that any of the successive holders took with notice of the taint. They all paid large sums of money in the usual course of business in evident good faith and in the belief that the bonds were valid. To say that Porter and associates intended to put their feet in the shoes of Crawford seems to me an entirely unwarranted and forced construction of the facts and of the contract between them.

394 It is not clear but that the legal title to the bonds was vested in Porter or Porter and Nickerson by means of the purchase from Drexel, Morgan & Co., who had the bonds in pledge, with power to sell. The sale to Porter having been made by D., M. & Co., with Crawford's consent, I am inclined to think, carried the title; and if this be so, the subsequent agreement with Crawford simply extinguished any claim of right on his part to redeem; but if this were not so, and the strict legal effect of the agreement and transaction was to make Porter and associates purchasers from Crawford of the legal title, still it is clear that in equity, if necessary to their protection, they should be subrogated to the rights of D., M. & Co., and through them to the rights of Dull & McCormick. If there could be a clearer case for the application of this familiar doctrine I do not think of it. The only objection to its application, as I understand, is based upon that clause of the contract with Crawford whereby the syndicate agreed to pay prior claims to the
395 amount of $100,000. But the meaning of that clause is not doubtful. It creates no equity in favor of any claimant. It simply recognizes the fact that there may be claims (under the six months' rule and for right of way, engine-houses, and the like) which, upon known equitable principles and precedents, the courts would declare prior and superior to a mortgage lien, and for these it makes provision. Such claims could not be escaped, and the manifest object and proper effect of the clause is to define the rights and duties of the parties to the contract in respect thereto as between themselves.

The proposition has been advanced that the mortgage is totally void, because the board of directors which ordered its execution was composed of men who did not really nor in good faith hold stock in the corporation. It will hardly do for these creditors to take that stand. If the board was incompetent to execute and to authorize Crawford to negotiate the mortgage bonds, then by the same rule
396 the special contracts on which they all predicate their demands against the company were unauthorized and void. So, too, would be the consolidation with the block coal road; and it would be the clear duty of the court to restore that road to Crawford or his grantees, instead of ordering it sold and the proceeds applied to the

judgment of claims for which, but for the consolidation, it could not, so far as is shown or suggested, be in any way made liable.

But, upon authority, it is plain that these corporate acts were done and ordered by directors *de facto*, if not *de jure*, and cannot, by general creditors at least, be assailed collatterally.

See following text-books and the authorities cited in each:

Wood's Railway Law, vol. 1, sec. 148.
Green's Brice's *Ultra Vires*, 2d Am. Ed., pp. 522–528.
Angel & Ames Corp., 10th Ed., p. —, & sec. 287.
Boone Corp., par. 140.

Another proposition advanced in argument is that Porter has in possession $1,200,000 of capital stock, much of which has never been paid for, and that as Porter is shown to have treated it as his
397 own, he should be required to pay for it, and that if this were done the company would be solvent. Of this argument the premise is false, as I think, and the conclusion, of course, erroneous.

There are two views of the matter: In the first place, the entire stock of both original companies, so far as issued, had been paid in full, and the consolidated stock having been issued in lieu of that, though nominally for a greater amount, must, I suppose, be regarded as paid-up stock. To so hold harms nobody, and to hold the contrary might, and probably would, do great injustice.

Again, by the terms of his construction contract, Crawford was entitled to receive, and did receive, the entire issue of stock in compensation for what he had done and decreed to do. If this contract stands the stock is paid for in full. If the contract is not allowed to stand, it does not follow that Crawford or his assignees shall be held to hold the stock as unpaid. That would be to force upon him or them a contract which was never entered into. Equity may annul
398 contracts in whole or in part, but, so far as I know, never by forcing parties into new agreements has perpetrated such an injustice as the one suggested.

The proper view of such a case, as I suppose, would be that if the contract be set aside entirely then the stock issued under it should all be cancelled, and if the contract be allowed to stand in part only—that is, to the extent it be shown to have been fair and just and to have been honestly performed—the amount of stock stipulated for should be reduced proportionately and the remainder cancelled. To say that the remainder shall stand, but be regarded as unpaid, and the holder held liable to the corporation for the amount, involves results too plainly inequitable to admit of discussion.

Agreeing, therefore, that the bonds and mortgage in the hands of the complainant are valid obligations, and the complainant entitled to a decree of foreclosure, I am constrained to dissent from so
399 much of the decree as postpones the mortgage lien to the claims of general creditors, and also from that part of the decree which declares that the second series of receivers' certificates shall not be paid until the general creditors have been paid in full. I know of no evidence whatever to support the finding that said certificates represent "construction or betterment of said railway."

By the terms of the order of this court authorizing the issue of these certificates it was explicitly declared that they should constitute a first lien on the property, and I am totally unable upon any equitable principle to understand why this part of the order should now be disregarded.

So, too, the third series of certificates ought not to be postponed to any claim which is not prior to the mortgage.

There may be particular claims in the case which ought to be paid in preference to the mortgage bonds. If so, the master's report will show it, and upon that the proper order could be made.

400 And afterwards, to wit, at the November term of said court,
on the 12th day of March, 1886, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings were had in the above-entitled cause, to wit:

Comes now the Cleveland Rolling Mill Company and files its claim herein in the words following, to wit:

401 To the honorable the judges of the United States circuit court
for the district of Indiana, in chancery sitting:

Showeth unto your honors your petitioner, The Cleveland Rolling Mill Company, a corporation organized under the laws of the State of Ohio, that it has furnished material which was used in the construction and betterment of the railroad of said Chicago and Great Southern Railroad Company of the kind, amount, and under the circumstances as follows, viz:

On or about October 10th, 1881, your petitioner sold to said railway company one thousand gross tons of iron rails to be laid in its track, at the rate of fifty & $\frac{25}{100}$ dollars per gross ton, to be delivered free on board the cars at the works of petitioner at Cleveland, Ohio, between November 1st and 15th, 1881, for which said railway company, through Henry Crawford, agreed to make payment in cash on the bills of lading for said rails, in accordance with a memorandum of sale; & also 66,620 pounds of splices at 2¾ cents
402 per pound, deliverable as aforesaid, for which said railway
company agreed to make payment as aforesaid.

That afterwards, and from the 14th day of Nov., A. D. 1881, until the 5th day of Dec., A. D. 1881, your petitioner did deliver to said railway company and said railway company received and accepted, and, as petitioner is informed, believes, and so states, laid in its track the total amount of 1,003$\frac{1030}{2240}$ gross tons of iron rails of the kind, quality, and description as sold as above stated; also the total amount of 66,620 pounds of splices at 2¾ cents per pound; for which said railway company became indebted to your petitioner in the total sum of fifty-two thousand two hundred and seventy-eight and thirty-three one-hundre-ths dollars ($52,278.33).

And your petitioner further showeth that the amount due your petitioner for said iron rails should have been paid to your petitioner as and when said iron rails were delivered on board the cars
403 at its works in Cleveland, Ohio; that statements of said ma-
terial were furnished to said railway company by your peti-

tioner as the same were delivered as aforesaid, to none of which statements were any objections made by said railway company.

That afterwards, and on or about the 24th of March, A. D. 1883, said railway company paid to your petitioner's agents the sum of twenty-two thousand six hundred and thirty-four and $\frac{36}{100}$ dollars ($22,634.36) on account of said iron rails so delivered, which was and is all the monies ever paid to your petitioner on account thereof.

That afterwards, and on the 10th day of May, A. D. 1884, your petitioner, in a suit theretofore begun in the United States circuit court for the northern district of Illinois, in which due and proper service had been made upon said corporation, and wherein your petitioner had in accordance with law and the rules of said last mentioned court filed its declaration, recovered a judgment against said railway company for the sum of thirty-five thousand
404 nine hundred and twenty-two & $\frac{26}{100}$ dollars ($35,922.26), besides the costs of suit to be taxed, and which costs were afterwards duly and properly taxed at the additional sum of twenty-four & $\frac{71}{100}$ dollars (24.71), making in all the amount of said judgment and costs the total sum of thirty-five thousand nine hundred and forty-six & $\frac{97}{100}$ dollars ($35,946.97), none of which has been paid to your petitioner, and which amounts in principal and interest, computed at the rate of six per centum per annum (the rate at which judgments bear interest in the State of Illinois), to the sum of thirty-nine thousand nine hundred and one & $\frac{12}{100}$ dollars, computing interest up to and including March 10th, 1886.

And your petitioner further showeth unto your honors that said last-mentioned judgment was obtained within and for the northern district of Illinois, wherein the principal office of said railway company was located, but that said railway company's railroad was not within said district nor any part thereof.

405 And that afterwards your petitioner caused suit to be brought in one of the counties in the State of Indiana, wherein said railroad is located, and that on the eleventh day of March, A. D. 1885, in the circuit court of Benton county, Indiana, in a suit brought by your petitioner therein upon said last-mentioned judgment, and wherein service was had upon said railway company, your petitioner recovered judgment against said railway company for the sum of thirty-seven thousand seven hundred and twenty-four & $\frac{36}{100}$ dollars ($37,724.36) and twenty dollars, costs of suit, making altogether the amount of said last-mentioned judgment and costs, the sum of thirty-seven thousand seven hundred and forty-four & $\frac{36}{100}$ dollars ($37,744.36), and that said last-mentioned judgment and costs and interest thereon at the legal rate of six per centum per annum from the time said judgment was rendered until and including the 10th day of March, A. D. 1886, amounts to the sum of forty thousand and two & $\frac{73}{100}$ dollars ($40,002.73).

406 And your petitioner does and will claim interest on said last-mentioned judgment and costs from the date the same was rendered as aforesaid.

That neither of said judgments have been paid nor any part thereof nor of either of them.

And your petitioner shows that there is now due to it on account of its said claim reduced to judgment as aforesaid, with interest thereon as aforesaid, the sum of 40,002 dollars and 73 cents ($40,002.73); to secure the payment of which said claim your petitioner is advised by its counsel, believes, and charges the same to be true, this honorable court has decreed a lien upon said railroad property, ordered to be sold by the final decree entered herein, as appears by the sixth paragraph thereof, and which claim, together with others of like character, is, by the provisions of said final decree, ordered to be referred to the master in chancery of this honorable court.

Wherefore, in consideration of the premises, your petitioner 407 prays that said claim may be adjudicated for and at the last-mentioned amount to be secured as a lien upon said railroad property under the said sixth paragraph of said decree, and that the same may be ordered to be paid out of the proceeds derived from the sale of said railroad property in the same order of priority as the same was and is adjudged a lien thereon equally with the other claims mentioned and provided for by said sixth paragraph of said decree.

And that your petitioner may have such further and other relief as shall be agreeable to equity and good conscience and as to your honors shall seem meet.

And your petitioner shall ever pray, etc.

CLEVELAND ROLLING MILL CO.,
By WM. CHISHOLM, *Pres't.*

HARRIS & CALKINS,
JOHN I. COOPER,
Sol'rs for Petitioner.

408 UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, } *ss:*

Before me, clerk of the district court of the United States in and for said district, on this 10th day of March, A. D. 1886, at Cleveland, in said district, personally appeared William Chisholm, and who, being by me first duly sworn, on oath deposes and says that he is president of the above-named petitioner, and has heard the above petition read and knows the contents thereof, and that the same is true in substance and in fact.

Witness my hand and the seal of said court this 10th day of March, A. D. 1886.

[SEAL.]

CHAS. W. BILL,
Clerk U. S. District Court.

409 Circuit Court of the United States, Northern District of Illinois.

THE CLEVELAND ROLLING MILL COMPANY *vs.* THE CHICAGO AND GREAT SOUTHERN RAILWAY COMPANY. } Assumpsit.

SATURDAY, *May* 10, 1884.

Present: The Hon. Henry W. Blodgett, district judge.

Now comes the plaintiff, by its attorney, and moves the court for judgment against the defendant herein, and it appearing to the court that the defendant had been duly served with process and has failed to plead, and the defendant being now ruled to plead instanter, and it failing to plead or answer the rule, and the defendant being now three times solemnly called comes not, but makes default: It is thereupon considered by the court that its default be entered, and that the plaintiff have and recover of the defendant its damages, and after hearing the evidence on the part of the plaintiff the court
410 finds that there is due to the plaintiff on the account mentioned in the declaration herein the sum of thirty-five thousand nine hundred and twenty-two dollars and twenty-six cents.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of thirty-five thousand nine hundred and twenty-two dollars and twenty-six cents, its damages, together with its costs in this behalf expended, amounting to twenty-four dollars and seventy-one cents, and that execution issue therefor.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the default and judgment entered of record in said court on the tenth day of May, A. D. 1884, in the cause wherein the Cleveland Rolling Mill Company is the plaintiff, and the Chicago and Great Southern Railway Company is the defendant, as the same appears from the
411 original record of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 25th day of June, A. D. 1886.

[SEAL.] WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, at the November term of said court, on the 16th day of March, 1886, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings were had in the above-entitled cause, to wit:

Comes now the Smith Bridge Company, and files its claim herein, in the words following, to wit:

412 To the honorable judges of the United States circuit court for the district of Indiana, in chancery sitting:

Showeth unto your honors your petitioner, the Smith Bridge Company, of Toledo, Ohio, that it has furnished material which was used in the construction and betterment of the railroad of said Chicago and Great Southern Railway Company, of the kind, amount, and under the circumstances as follows, viz:

On the 26th day of October your petitioner entered into a written contract to construct a bridge for said railway Co. over the Wabash river, near Attica, Indiana, and said bridge was constructed in all respects as provided by said contract.

And on the 24th day of July, 1883, your petitioner entered into a second written contract with said railway company to construct a bridge over Pine creek, near Attica, Indiana, and said bridge
413 was constructed in all respects as provided by said contract.

Both of said contracts expressly provided that until fully paid for the said bridges and bridge material should be and remain the property of said Smith Bridge Company, with the right of possession and removal, and by virtue thereof the petitioner claims a prior title and lien thereon, as shown by the amended intervening petition filed in this court.

Your petitioner further shows that said material so furnished and used in the construction and betterment of said railroad by your petitioners amounted, at the reasonable value thereof, and at the price agreed upon as aforesaid, to the sum of — dollars and — cents, and the amount due for the same, after deducting payments, was, on or about the third day of April, A. D. 1884, settled and adjusted by and between the petitioner and said railway company at the sum of twenty-one thousand six hundred and thirty-
414 seven — and fifty-four cents ($21,637.54), and that there is now due to your petitioner for said material for the amount the same was adjusted as aforesaid, with lawful interest thereon since such adjustment, the total sum of $24,234.04—twenty-four thousand two hundred thirty-four dollars and four cents, to secure the payment of which said claim your petitioner is advised by counsel, believe and charge the same to be true, this honorable court has decreed a lien upon said railroad property, ordered to be sold by the final decree entered herein, as appears by the sixth paragraph thereof, and which claim, together with others of like character, is, by the provisions of said final decree, ordered to be referred to the master in chancery of this honorable court.

Wherefore, in consideration of the premises, your petitioner prays that said claim may be adjudicated for and at the last-mentioned account, to be secured as a lien upon said railroad property
415 under the said sixth paragraph of said decree, and that the same may be ordered to be paid out of the proceeds derived from the sale of said railroad property, in the same order of priority as the same was and is adjudged a lien thereon, equally with the other claims mentioned and provided for by said sixth paragraph of said decree.

And that your petitioner may have such further and other relief as shall be agreeable to equity and good conscience, and as to your honors shall seem meet; and your petition- shall ever pray, etc.

THE SMITH BRIDGE COMPANY.
WM. S. DALY, *Sec'y.*

E. W. TOLERTON,
JOHN S. COOPER,
Sol'rs for Petitioner.

416 STATE OF OHIO, } *ss:*
Lucas County, }

Before me, a notary public in and for said county, on this 12th day of March, A. D. 1886, at Toledo, in said county, personally appeared William S. Daly, and who, being by me first duly sworn, on oath deposes and says that he is secretary of the above-named petitioner, and has heard the above petition read and knows the contents thereof, and that the same is true in substance and in fact.

Witness my hand and official seal this twelfth day of March, A. D. 1886.

H. F. THUNCK,
Notary Public, Lucas County, Ohio.

And afterwards, to wit, at the November term of said court, on the 27th day of March, 1886, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Now comes William P. Fishback, master in chancery, and files his report of the sale of the property hereinbefore ordered to be sold in the words following, to wit:

417 To the honorable court:

Now comes William P. Fishback, master in chancery, heretofore appointed to make sale of the property mentioned in the decree and order of sale entered herein, and reports to the court as follows:

On the 22nd day of February, 1886, there came to my hands a duly certified copy of the decree and order of sale made in said above-entitled cause on the 16th day of February, 1886. In obedience thereto I caused notice of the time, place, and terms of the sale ordered to be made by said decree to be published in the Indianapolis Daily Journal, a daily newspaper of general circulation published in the city of Indianapolis, Indiana, on the following days, viz., February 24th and March 3rd, 10th, 17th, and 24th, and also caused like notice to be published in the Daily Inter-418 Ocean, a daily newspaper of general circulation published in the city of Chicago, on the following days: February 24th and March 3rd, 10th, 17th, and 24th, 1886.

I attach hereto affidavits of the publishers of said papers showing the publication of said notices in said papers respectively on the days above-named, and make the same a part of this report. At the time and place named in said notice, to wit, on Saturday the 27th day of March, A. D. 1886, at the door of the United States circuit court room, in the city of Indianapolis, I attended in person, and then and there, in the presence of a large number of persons having an opportunity to bid at said sale, did offer for sale at public auction to the highest and best bidder the railroad property and franchises described in a printed notice, of which the following is a copy:

419 *Master's Sale of the Chicago and Great Southern Railway.*

By virtue of a certified copy of a decree issued out of the circuit court of the United States for the district of Indiana, directed to the undersigned, master in chancery of said court in a certain cause pending in said court, wherein Henry H. Porter and others are complainants and The Chicago and Great Southern Railway Company and others are defendants, the undersigned master in chancery of said court will offer for sale, at public auction, at the door of the United States circuit court room, in the city of Indianapolis, county of Marion, and State of Indiana, on Saturday, the twenty-seventh (27th) day of March, A. D. 1886, at 10 o'clock a. m. of said day, the following described property and premises, to wit: All and singular the line of the railway of said defendant corporation, The 420 Chicago and Great Southern Railway Company, constructed or to be constructed, from Fair Oaks, in Jasper county, extending through the counties of Jasper, Newton, Benton, Warren, Fountain, Parke, and Clay to the city of Brazil, in said county of Clay, all being in the State of Indiana, together with all lands, tenements, and hereditaments acquired or appropriated for the purpose of a right of way of said railroad, including all side tracks and rights of way for the same, and engine-houses, car-houses, station-houses, warehouses, machine-shops, car-shops, workshops, freight-houses, grain-houses, and elevators, and other erections and superstructures; all machinery, tools, or implements held or acquired for use in connection with said railway, and also all locomotives, tenders, cars, and other rolling-stock and equipment, rails, bridges, ways, piers, carriages, chairs, spikes, wheels, axles, ties, and 421 all fuel and other stores and supplies belonging to or that may from time to time belong to or be provided for use upon or in connection with said railroad, with all and singular the appurtenances, and the rents and incomes, and profits of the same, and all the franchises and other rights of the said railway company pertaining to the said railway, being all the property described in and covered by two certain deeds of trust made by the Chicago and Great Southern Railway Company to John C. New, trustee, one dated November 1st, 1881, and one dated April 9th, 1883.

Said property will be sold at public auction to the highest bidder without relief from valuation or appraisement laws and without the right of redemption from such sale and free from all demands, liens, and incumbrances whatever.

422 A deposit of fifty thousand ($50,000) dollars will be required of each and every bidder before receiving any bid from such bidder at said sale, which deposit will be absolutely forfeited to the uses of the trusts in said cause if the bidder to whom the property shall be struck off shall fail to pay or complete the said

purchase in accordance with the terms of this decree. No bid will be received for less than five hundred thousand dollars.

Upon confirmation of the sale the balance of the purchase-money bid, in addition to said sum of fifty thousand dollars, as hereinbefore provided, shall be paid by the purchaser into the registry of the court, unless it is then otherwise ordered, adjudged, and decreed by the court, and upon full performance by the purchaser of the order and decree of the court in that behalf hereafter entered, the
423 said purchaser shall be let into possession of said property and shall receive a deed therefor in which the said railway company and said John C. New, trustee, shall unite with the master.

WILLIAM P. FISHBACK,
Master in Chancery United States Circuit Court, District of Indiana.

R. B. F. PIERCE, AND
McDONALD, BUTLER AND MASON,
Solicitors.

Before offering said property for sale I read, in the hearing of the bystanders, the notice above set out, and thereupon Henry H. Porter bid for said property the sum of $501,000.00. Before I received said bid the said Henry H. Porter deposited the sum of $50,000 in cash as a deposit, to be forfeited to the use of the trusts if said Henry H. Porter should fail to pay or complete the purchase in accordance with the terms of the decree, in case said property was struck off to him at said sale.

I thereupon proceeded to cry said sale and said bid of
424 $501,000.00, and receiving no other bid from any other person, and the same being more than $500,000.00, the minimum price for which said property was to be sold according to the orders of said court, I thereupon struck off and sold said railroad property, premises, and franchises as described and set forth in said notice and the decree and order of sale, to the said Henry H. Porter for the said sum of five hundred and one thousand dollars.

I thereupon paid to Noble C. Butler, Esq., clerk of this court, to be placed in the registry thereof, said sum of $50,000.00 so deposited.

I attach hereto the certified copy of the decree and order of sale, under authority of which said sale was made.

All of which is respectfully submitted.

March 27, 1886.

WILLIAM P. FISHBACK,
Master in Chancery U. S. Court, Dist. of Ind.

425 And afterwards, to wit, at the November term of said court, on the 5th day of April, 1886, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

426 This cause coming on further to be heard, come now the complainant, Henry H. Porter, and the defendant, by their respective solicitors, and the complainant shows to the court that heretofore, to wit, on February 16th, 1886, decree of foreclosure and

sale was rendered and entered by this court in this cause; that on the 2nd day of March, A. D. 1886, the said decree of foreclosure and sale so rendered and entered on February 16th, 1886, was by the court amended by adding thereto an amendment duly entered of record in said cause, to which original decree and amendment thereof, as the same now appear of record in said cause, complainant here now refers the court.

That by said decree William P. Fishback was appointed special master to sell said railway and property in accordance with the terms, conditions, and notice prescribed and provided in said 427 decree; that afterwards, to wit, on the 27th day of March, A. D. 1886, the said master, William P. Fishback, did sell said railway and property in obedience to and performance of the terms and conditions of the said decree and filed in this court his written report of such sale and his proceedings as such special master under said decree, which said report is on file and of record in this cause in this court, to which reference is hereby made.

That at said sale of said railway and property complainant, Henry H. Porter, purchased said railway and property at and for the sum and price of five hundred and one thousand ($501,000) dollars, and paid thereon at time of sale, required by the decree, $50,000.00.

That on said 27th day of March, 1886, after said special master had filed in this cause in this court his report of sale, com- 428 plainant, by his solicitors, served notice on the defendants in this cause, by their solicitors, that a motion for the confirmation of said sale of said railway and property would be presented to this court on Monday, April 5th, A. D. 1886, or as soon thereafter as the court could hear the same; that by the amendment of said original decree rendered and entered on the 2nd day of March, 1886, it was provided as follows:

"That all persons claiming to be creditors of said railway company and to have claims which are entitled in equity to be paid out of the proceeds to arise from the sale of said property do present and file with the master, William P. Fishback, their said claims prior to the day of sale, namely, the 27th day of March, 1886, and that all claims which are not filed before said last-named day be, and the same are hereby, barred and foreclosed, and that said master do forth- 429 with give notice of the provisions of this order by publication for ten days in some daily newspaper published in the city of Indianapolis.

And it is further ordered, adjudged, and decreed that the sale of the property hereinbefore ordered shall pass to the purchaser, title struck free and discharged of all liens and claims, including the two clauses of claims mentioned in the sixth paragraph of said decree.

The said master did, in accordance with said order, publish the notice therein required, and did receive all claims filed prior to and on the said day of sale, to wit, the 27th day of March, 1886.

That under an order of this court rendered and entered April 29th, 1885, receiver's certificates were issued to the amount of twenty-three thousand dollars ($23,000), and that under an order of this court rendered and entered August 15th, 1885, receiver's cer-

430 tificates to the aggregate amount of fifty thousand dollars ($50,000) were issued and that under another order of this court, rendered and entered August 15th, 1885, receiver's certificates to the aggregate amount of eighty thousand dollars ($80,000) were issued; that all three of said series of receiver's certificates so issued are still outstanding and unpaid.

Complainant further shows that he purchased from said receiver and is now the owner and holder of all the said receiver's certificates, amounting upon the face thereof to one hundred and fifty-three thousand dollars ($153,000); that no interest has been paid upon either or any of said receiver's certificates, and that the total amount due upon said three series of certificates up to this date, to wit, April 5th. 1886, [is] $157,884.64.

Complainant further shows the court that after subtracting from the purchase price, to wit, $501,000, to be paid for said rail- 431 way and property upon said purchase, the entire amount due upon said three series of receiver's certificates, there will remain of said purchase-money the sum and amount of $343,115.36, the same being more than sufficient to pay in full all claims filed against said railway and property, or the proceeds to arise from the sale thereof, together with all costs of court, solicitors' fees, and unpaid receiver's expenses. Complainant therefore moves the court for an order approving and confirming said sale of said railway and property by said special master as by said master reported to this court on the said 27th day of March, 1886, and that upon payment of the balance of the purchase-money so bid by complainant at such sale, the master may be ordered and directed by the court to execute and deliver to complainant a good and sufficient deed, con- 432 veying to him said railway and property, and all rights, priveleges, powers, immunities, and franchises thereunto appertaining and belonging, and that the receiver now in possession of said railway and property be ordered and directed to deliver full possession of said railway and property to complainant upon complainant's receiving the deed to said railway and property from said master; that in making payment of purchase-money for said railway and property complainant may be permitted to turn in and pay as so much cash upon said purchase the said three series of receiver's certificates, amounting, together with interest, to the sum and amount of $157,884.64, the entire balance of said purchase-money thereafter remaining to be paid in cash upon the receipt from said master of a good and sufficient deed conveying said railway and property, rights, powers, priveleges, immunities, and franchises to complainant.

433 And the Cleveland Rolling Mill Company and other defendants having filed their exceptions and master's report and objections to the confirmation of sale as follows, viz:

(Here insert.)

Which exceptions and objections, upon consideration thereof, are overruled, and said defendants except thereto and pray an appeal from the decree confirming the sale herein and the delivery of said property to the purchaser to the Supreme Court of the United States, which appeal is allowed upon said defendants filing bond and security to be approved by the court.

And the court having considered said motion for confirmation, and being fully advised in the premises, it is now here ordered, adjudged, and decreed that the said sale of the said railway and property mentioned and described in said decree rendered and entered February 16th, 1886, made by said special master and reported to
this court on March 27th, 1886, be, and the same is hereby,
434 and in all things approved and confirmed by the court.

It is further ordered, adjudged, and decreed that upon the payment by the purchaser of the full sum and amount bid by him at said sale the master, William P. Fishback, do, and he is hereby, ordered and directed to make, execute, and deliver to the said Henry H. Porter, complainant herein, and purchaser as aforesaid, a good and sufficient deed of conveyance, conveying to him said railway and property, together with all the rights, privileges, powers, immunities, and franchises thereunto belonging and pertaining, freed, and discharged of all liens and claims, including the two classes of claims mentioned in the sixth paragraph of the said decree of foreclosure and sale rendered and entered in this cause February 16th, 1886, and upon the delivery of such deed to said purchaser Porter
the receiver shall, and he is hereby, ordered to deliver full
435 possession of said railway and property to said Henry H. Porter.

It is further ordered, adjudged, and decreed that in making such payment said complainant, Henry H. Porter, purchaser as aforesaid, shall be, and he is hereby, authorized, permitted, and empowered to turn in and pay as cash, in part payment of the purchase-money by him bid at said sale, the following receiver's certificates heretofore issued under the orders of this court, to wit:

1. Receiver's certificates issued under the order of this court of April 29th, 1885, to the amount at par value of twenty-three thousand ($23,000) dollars, together with accrued interest thereon, making the total sum due upon said series of certificates the sum of $24,135.17.

2. Receiver's certificates issued under an order of this court
436 of August 15th, 1885, to the amount at par value of fifty thousand ($50,000) dollars, together with accrued interest thereon, making the total sum due upon said series of certificates the sum of $51,804.93.

3. Receiver's certificates issued under another order of this court, August 15th, 1885, to the amount at par value of eighty thousand ($80,000) dollars, together with accrued interest thereon, making the total sum due upon said series of certificates the sum of $81,944.64. All the remainder and residue of said purchase-money, after subtracting the fifty thousand ($50,000) dollars paid thereon at the day of sale, to be paid by said complainant, Henry H. Porter, in cash, under and in accordance with the terms of said decree.

And said John C. New, trustee, being temporarily absent, it is ordered that, upon request of said purchaser, he make a deed of confirmation of the master's deed hereinbefore issued to be made.

And it appearing to the court that the master has been unable to complete and file his report under reference referring all claims to him to find and report the amount due thereon, the said reference is hereby continued.

437 And afterwards, to wit, at the November term of said court, on the 19th day of April, 1886, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings were had in the above-entitled cause, to wit:

Now comes the complainant, Henry H. Porter, by R. B. F. Peirce his solicitor, and files his answer to the intervening petition of Volney Q. Irwin herein, in the words following, to wit:

438 *Intervening Petition of Volney Q. Irwin.*

Comes now Henry H. Porter, holder and owner of $1,200,000 of first-mortgage bonds of the said Chicago and Great Southern Railway Company, secured by the mortgage to John C. New, dated November first, 1881, and the supplemental — and dated ——, 188–, —answer- the petition and claim [of] Volney Q. Irwin and says:

The demand of said Irwin against the said railway company is exclusively for grading work done in the original construction of said road north of Attica under written contract of November 9th, 1881. That subsequently the original Chicago and Great Southern Railway Company became consolidated with the Chicago and Block Coal Railroad Company, which at the date of said Irwin's contract was the sole owner without incumbrances of the railroad from Attica to Yeddo.

439 Such consolidation was effected by articles filed in the office of the secretary of state of Indiana, specifically reciting that the entire railroad and property of the consolidated company was subject to the trust deed to said John C. New as a first lien. A copy of such articles is herewith filed.

Shortly after the said 1st day of November, 1881, the said Chicago and Great Southern Railway Company issued and negotiated for orders to innocent holders $1,000,000 of its said bonds secured by its first mortgage, which had been duly rendered in each county along its line of railroad.

The railway corporation used all the money realized from the negotiation of such bonds in paying said Irwin and others for construction work, and the said Irwin there and then well knew 440 of the execution of said first mortgage and the negotiations to innocent bond parties of said bonds, and he personally obtained directly from such parties a portion of the moneyes which constituted the consideration of the negotiation of such bonds, such payments to said Irwin out of the proceeds of such bonds negotiations amounted to not less than $30,000.

Afterwards the said Irwin filed a notice of a mechanic's lien upon a part of the road lying north of Attica in Warren and Burton counties, and brought the action and promised the decree in the Warren circuit court set up in his petition.

Afterwards on the — day of ——, 188–, he purchased the portion of the road ordered by the said decree to be sold for the sum $—— and received a certificate of purchase.

Afterwards this respondent, having in good faith and for
441 order purchased the first mortgage bonds from the holders
thereof, and for the purpose of protecting his interests as such bondholder, on the — day of ——, 1886, and within one year from the sale, he paid into the Warren circuit court the sum of $——, being the sum required by law to redeem the property from the lien of the said Irwin, and then sold to him.

Wherefore this respondent, being such bondholder as aforesaid, denies that the said Irwin has any lien or priority whatever on any part of said road over the first-mortgage bonds, and that, having been fully cognizant of the original of said bonds and actually removed part of the *oards* thereof, he is estopped from disputing their validity or lien or making any defense against them; and for such reasons the claim of said Irwin ought to be dismissed.

HENRY D. PORTER,
By R. B. F. PENN,
His Solicitor.

442 And afterwards, to wit, at the May term of said court, on
the 4th day of June, 1886, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

On this 2nd day of June, 1886, this cause came on further to be heard before the Honorable W. Q. Gresham, circuit judge, at chambers, in Chicago, Illinois, upon the motion of the complainant for the entry of an order requiring all evidence relating to claims filed in said cause before the master for sums exceeding 5,000 to be closed by a short date to be fixed by the court, and also a motion for an order requiring the master immediately thereafter to file his report and the evidence as to all such claims, and also a motion for an order of the court staying all further proceedings in the master's office as to all claims filed herein above the sum of $5,000 in amount to abide the result of the judgment and decree of the Supreme Court of the U. S. to be rendered upon the appeal to be taken on the claims exceeding $5,000, which motion, being argued by counsel and considered by the court, it was by the court ordered that the said motions as made be, and each of them is, overruled, but that, in lieu of the motions as made, it is hereby ordered that the master to whom the intervening claims have been referred shall set a time within the next three days at which he will begin to take evidence upon all claims represented by intervening petitions filed in this cause, fixing a day, time, and place for taking the evidence upon such claims, which time shall commence within the next seven days from the
date thereof; that the claimants representing all claims filed
443 herein shall within 25 days next ensuing the commencement
of the taking of such proof as fixed by the master put in the proof of their respective claims, and that at the expiration of said 25 days, or sooner, if claimants' proof is sooner closed, the said complainant shall begin taking his proof in opposition to such of said

claims as he may desire, and that within thirty days thereafter the said complainant shall conclude his proof in opposition to said claims.

And now comes the complainant, by his solicitors, and further moves the court for leave to file his several and respective answers in writing herewith presented and made a part hereof to the intervening petitions or claims heretofore filed herein of the Pittsburgh Bessemer Steel Co. (Limited), the Ohio Falls Car Company, the Smith Bridge Co., the Cleveland Rolling Mill Co., and Oliver Adams, agent, which motion is overruled by the court.

And said motion and answers are in the words following, to wit:

Motion.

And now comes the complainant, by his solicitors, and moves for leave to file his several and respective answers in writing herewith presented and made a part hereof to the intervening petitions or claims heretofore filed herein of the Pittsburgh Bessemer Company (Limited), the Ohio Falls Car Company, the Smith Bridge Company, the Cleveland Rolling Mill Company, and Oliver Adams, agent.

R. B. F. PEIRCE,
McDONALD, BUTLER & MASON,
Solicitors for Complainant.

444 Henry H. Porter makes response to the claim of the Pittsburgh Bessemer (Limited) filed herein, and says:

That this respondent is the owner and holder in good faith and for value of all the bonds issued by the Chicago and Great Southern Railway Company, and that the said bonds and coupons thereto belonging are secured by the original trust deed executed by said corporations to John C. New November 1st, 1881, and a supplemental deed to said New, April 9th, 1883. Both said deeds were recorded according to law in each of the counties wherein said railroad is situate shortly after their respective dates, and thereby became a first lien on the said railroad equipment and appurtenances.

Prior to March, 1883, the Chicago and Block Coal Railroad Company owned in fee-simple, and absolutely free of any mortgage or debt, a fully constructed and operated line of railroad from Attica to Yeddo. In March, 1883, by articles of consolidation, duly 445 filed in the office of secretary of state of Indiana, a copy of which, as Exhibit "A," is made a part of this response, whereby the new corporation thereby created acquired all the railroads and property of the two original corporations on the express covenant, as recited in the said articles of consolidation, that the trust deed to said John C. New, dated November 1st, 1881, should constitute a paramount first lien on the entire property of the consolidated company.

This respondent further shows that the sole consideration for the claim of the Bessemer Steel Company was for the balance due for steel rails sold by it to the said railway company for the original construction of the road north of Attica and prior to the consolidation.

The said Bessemer Steel Company did not at any time take out any lien upon any part of said railway by filing notice under the mechanics' lien law of Indiana.

446 The said rails sold by it were laid in the track between Goodland and Fair Oaks, and became thereby a portion of the railroad and subject to the mortgage. The said Bessemer Steel Company exacted and received the personal security and written obligation of a third party for its debt against the railway company filed herein, which security and obligation it still holds, and has not offered to surrender.

Respondent says that shortly after the date of said original trust deed, viz., in January, 1882, the said Chicago and Great Southern Railway Company negotiated for value, and in the usual course of business, $1,000,000 of the bonds secured by the said mortgage of November 1st, 1881, to innocent third persons, who took them in good faith, relying upon their recitals that they constituted
447 a first lien upon the property described in said recorded mortgage. and since that date this respondent also in good faith and for value became the owner and holder of such $1,000,000 of bonds.

This respondent further says that the said Pittsburg Bessemer Steel Company well knew at the time of the issue and negotiation of said bonds, and made no objection thereto, and made no claim of lien or priority as against said bonds or the mortgage, and, with like full knowledge, said Pittsburg Bessemer Steel Company actually received large sums of money on account of its claim for rails paid it directly out of the fund realized from the negotiation of said bonds.

448 For which reasons the respondent insists that the said Pittsburg Bessemer Steel Company is in equity estopped and precluded from claiming any lien or priority over the said mortgages of November, 1881, and April, 1883, and the bonds issued thereunder.

Respondent further shows that the fund in court was created exclusively by the sale of the property mortgaged for his benefit and security, and that neither prior to the appointment of a receiver nor subsequent thereto has there been any diversion of current income of the railroad, either by the way of paying interest or making betterments. This respondent therefore insists that the lien of said mortgage and the equities of the bonds thereby secured ought to be decreed to be paramount to any claim of the said Pittsburg
449 Bessemer Steel Company to or upon the proceeds of sale of the mortgaged property, and that such intervening petition against the fund ought to be dismissed at the costs of such intervenor.

McDONALD, BUTLER AND MASON, AND
R. B. F. PIERCE,
Solicitors for Henry H. Porter.

450 **EXHIBIT "A."**

Articles of consolidation between the Chicago and Great Southern Railway Company, of Indiana, and the Chicago and Block Coal Railroad Company, of Indiana.

This agreement, made between the Chicago and Great Southern Railway Company, a corporation existing under the laws of the State of Indiana, as party of the first part, and the Chicago and Block Coal Railroad Company, a corporation existing under the laws of the State of Indiana, as party of the second part, witnesseth: That whereas the Chicago and Great Southern Railway Company is a corporation organized under the general laws of the State of Indiana, and is duly authorized and empowered to locate, con-
451 struct, own, and operate a line of railroad in the State of Indiana, extending from a point on the Illinois State line, in the county of Lake, in Indiana; thence southwardly to Brazil, in Clay county, Indiana, and such company has its road now in process of actual construction from the city of Attica northwardly, so as to form a Chicago connection with the line of railroad belonging to the Louisville, New Albany and Chicago Railway Company; and

Whereas the said Chicago and Block Coal Railroad Company is a corporation organized under an act of the General Assembly of the State of Indiana, approved March 3rd, 1865, and entitled "An act to authorize, regulate, and confirm the sale of railroads, to
452 enable purchasers of the same to form corporations and to exercise corporate powers and to define their rights, powers, and priveleges; to enable such corporation to purchase and construct connecting and branch roads, and to operate and maintain the same," and the acts supplemental thereto and amendatory thereof, and is under such statutes duly authorized and empowered to locate, construct, own, and operate a line of railroad in the State of Indiana, extending from the Ohio river, in Warrick county, northwardly through the counties of Warrick, Pike, Daviess, Green, Owen, Clay, Parke, Fountain, Warren, Benton, Jasper, Porter, and Lake to a point on Lake Michigan at or near the mouth of
453 the Calumet river, and said company has actually completed its said railroad from a point in the city of Attica, Fountain county, Indiana, southwardly about twenty-two (22) miles and has done considerable work in grading other portions of its line in Parke and Clay counties; and

Whereas the line of railroad belonging to said party of the first part, and now in process of actual construction as aforesaid, will when completed to Attica intersect in a continuous line with the line of railroad of the party of the second part, and now actually constructed and in operation northwardly from Attica, so that two such lines of railway can then join, connect, and form one continuous and extended line of railway for the transportation
454 of passengers and freight without any change of cars; and

Whereas both the parties hereto have full authority, under their respective charters and the laws of the State of Indiana, to connect their said lines of railroad as aforesaid and to merge and consolidate their respective lines of railroad, stocks, franchises, and properties of the said two corporations, so as to form a consolidated corporation upon such terms as may be agreed upon:

Now, therefore, in consideration of the promises and the mutual covenants to be performed by the respective parties hereto, as hereinafter expressed, and for the purpose of securing to the several stockholders of the parties hereto, all and singular, the ad-
455 vantages and profits which will result from a merger and consolidation of all the stock, railroads, properties, and franchises of the said parties hereto, so as to form but one corporation, the said Chicago and Great Southern Railway Company and the said Chicago and Block Coal Railroad Company do hereby adopt the following basis and articles of consolidation, and do agree upon the due execution of those presents to consolidate and merge all and singular their respective railways, stocks, property, choses in action, and assets of every kind, and franchises, so as to constitute thereafter one consolidated corporation, on the terms and conditions hereinafter stated, viz:

Article 1.

456 The name of the consolidated corporation hereby created shall be the Chicago and Great Southern Railway Company.

Article 2.

The capital stock of said consolidated corporation shall be three millions of dollars, to be divided into thirty thousand shares of one hundred dollars ($100) each.

Article 3.

The board of directors of said consolidated corporation shall consist of nine persons, to be chosen from among the stockholders at such time and place as may be provided in the by-laws; but until the first regular election for directors of such consolidated corporation the existing board of directors of the present Chicago and Great Soutnern Railway Company shall by force of these presents constitute the board of directors of the consolidated corporation.

457

Article 4.

On the execution of these articles the stockholders of the two corporations parties hereto shall at once become stockholders in the consolidated corporation hereby created to the same amount held by these in either of the present corporations, and all certificates of stock issued by either of the parties hereto and now outstanding shall, as soon as practicable after the taking effect of this consolidation, be retired and cancelled, and on the surrender of any such outstanding certificates there shall be issued to the party so surrendering a certificate for a like amount of shares of the stock of the consolidated corporation.

Article 5.

458 All and singular the lines of railway, assets, choses in action
municipal aid, monies, equipment, tools, rails, ties,
machinery, books, papers, and accounts, franchises, and property of
any and every kind belonging to either of the parties hereto, and
whether held in possesion, revoca-ion, expectancy, or remainder,
shall at once upon the execution of these presents, and without any
other or further conveyance, deed, or assignment pass to and become
vested in the said consolidated corporation hereby created, which
said last-named corporation shall from thenceforth have exclusive
ownership, possession, and domination thereof, and it is expressly
agreed that this consolidated corporation hereby created shall
459 have all and singular the powers, priveleges, and franchises
in any way now belonging to the either of the parties, and
especially shall be vested with all those granted to corporations organized
under said act of March 3rd, 1865, being the statute under
which the party of the second part was organized and is now vested
with its powers.

Article 6.

All and singular the debts, contracts, and engagements of either of
the parties hereto are hereby declared to be assumed and shall become
the debts, contracts, and engagements of the consolidated corporation
hereby created; and it is especially declared that the issue
of two million dollars of bonds made by the party of the first
460 part hereto, and secured by a mortgage or trust deed
executed to John C. New, of Indianapolis, Indiana,
and dated November 1st, 1881, as the same now appears of record
in the counties of Clay, Parke, Fountain, Warren, Benton, Newton,
and Jasper, is fully assumed by the consolidated corporation,
and the mortgage or trust deed recorded as aforesaid for the
purpose of securing the payment of said bonds and interest
thereon shall constitute the first lien upon all and singular
the railroad of said consolidated corporation in said last-named
counties from Brazil northwardly to the junction with the
Louisville, New Albany and Chicago railway; also all the lands,
equipments, tools, income, property, and franchises, as described
461 in such trust deed, and it is expressly agreed between
the parties hereto, and it is hereby declared to be one of the
conditions and trusts of this consolidation, that as soon as the said
consolidated corporation comes into existence it will forthwith execute
and deliver to said John C. New a proper deed of further assurance
to carry into effect the true intent of this article and vest
in said trustee a first lien upon the legal title to said entire line of
railroad as aforesaid.

Article 7.

All books, vouchers, records, deeds, muniments of title, accounts,
and other papers or documents in any way relating to the
462 business or property of either of the parties hereto shall at
once be placed in the custody of the secretary of the said

consolidated corporation, and said books, vouchers, records, deeds, muniments of title, accounts, and papers shall henceforth on the execution of these presents be taken and considered so far as may be necessary, as the records, books, and papers of the consolidated corporation.

In order that there shall be no delay in the immediate organization of said consolidated corporation, it is hereby agreed that until otherwise ordered by the board of directors of the said consolidated corporation the common or corporate seal, record-book, and 463 officers of the party of the first part shall be and constitute the corporate seal, record-book, and officers of the consolidated corporation.

In witness whereof and as duly thereto authorized by their respective board of directors, and a majority in value of the stock of each of the parties hereto, the said parties of the first and second parts have hereto set each its corporate seal, duly attested by its secretary, and each has caused the signature of its president to be hereto affixed this tenth day of March, A. D. 1883."

464 Henry H. Porter makes response to the claim of the Cleveland Rolling Mill Company, filed herein, and says: That this respondent is the owner and holder in good faith and for value of all the bonds issued by the Chicago and Great Southern Railway Company, and that the said bonds and coupons thereto belonging are secured by the original trust deed executed by said corporations to John C. New November *November* 1st, 1881, and a supplemental deed to said New April 9th, 1883. Both said deeds were recorded according to law in each of the counties wherein said railroad is situate shortly after their respective dates, and thereby became a first lien on the said railroad equipment and appurtenances.

465 Prior to March, 1883, the Chicago and Block Coal Railroad Company owned in fee-simple and absolutely free from any mortgage or debt a fully constructed and operated line of railroad from Attica to Yeddo. In March, 1883, by articles of consolidation duly filed in the office of the secretary of state of Indiana, a copy of which as Exhibit "A" is made a part of this response, whereby the new corporation thereby created acquired all the railroads and property of the two original corporations on the express covenant as recited in the said articles of consolidation that the trust deed to said John C. New, dated November 1st, 1881, should constitute a paramount first lien on the entire property of the consolidated company.

466 This respondent further shows that the sole consideration for the judgment and claim of the said Cleveland Rolling Mill was for a balance due for iron rails sold by it to the railway company for the original construction of the road north of Attica, and prior to the consolidation the said Rolling Mill Company did not retain any lien or ownership of the rails, but the same were placed in the track of the road between Oxford and Goodland, and thereby became a portion of the railroad and subject to the lien of said mortgage of November 1st, 1881.

Respondent further shows that the said Cleveland Rolling Mills

Company did not at any time perfect any statutory lien upon
467 the said railroad or any portion thereof by filing notice under
the mechanics' lien law of Indiana, but on the — day of ——, 1884, merged its original cause of action in an ordinary judgment, recovered against the consolidated corporation in the circuit court of the United States for the northern district of Illinois.

Respondent says that shortly after the date of said original trust deed, viz., in January, 1882, the said Chicago and Great Southern Railway Company negotiated for value and in the usual course of business $1,000,000 of the bonds secured by the said mortgage of November 1st, 1881, to innocent third persons, who took them in
good faith, relying upon their recitals that they constituted a
468 first lien upon the property described in said recorded mort-
gage, and since that date this respondent, also in good faith and for value, became the owner and holder of such $1,000,000 of bonds.

This respondent further says that the said Cleveland Rolling Mill Company well knew at the time of the issue and negotiation of said bonds, and made no objection thereto, and made no claim of lien or priority as against said bonds or the mortgage, and with like full knowledge said Rolling Mill Company actually received large sums of money on account of its claim for rails paid it directly out of the
fund realized from the negotiation of said bonds, for which
469 reasons the respondent insists that the said Rolling Mill
Company is in equity estopped and precluded from claiming any lien or priority over the said mortgages of November, 1881, and April, 1883, and the bonds issued thereunder.

Respondent further shows that the fund in court was created exclusively by the sale of the property mortgaged for his benefit and security, and that neither prior to the appointment of a receiver nor subsequent thereto has there been any diversion of current income of the railroad, either by the way of paying interest or making betterments.

This respondent therefore insists that the lien of said mort-
gages and the equities of the bonds thereby secured ought
470 to be decreed to be paramount to any claim of the said
Rolling Mill Company to or upon the proceeds of sale of the mortgaged property, and that such intervening petition against the fund ought to be dismissed at the costs of such invervenors.

McDONALD, BUTLER AND MASON, AND
R. B. F. PIERCE,
Solicitors for Henry H. Porter.

471 EXHIBIT "A."

"Articles of consolidation between the Chicago and Great Southern Railway Company of Indiana and the Chicago and Block Coal Company of Indiana.

This agreement, made between the Chicago and Great Southern Railroad Company, a corporation existing under the laws of the State of Indiana, as party of the first part, and the Chicago and Block Coal

Railroad Company, a corporation existing under the general laws of the State of Indiana, as party of the second part, witnesseth:

That whereas the Chicago and Great Southern Railway Company is a corporation organized under the laws of the
472 State of Indiana and is duly authorized and empowered to locate, construct, own, and operate a line of railroad in the State of Indiana, extending from a point on the Illinois State line, in the county of Lake, in Indiana, thence southwardly to Brazil, in Clay county, in Indiana, and such company has its road now in process of actual construction from the city of Attica northwardly, so as to form a Chicago connection with the line of railroad belonging to the Louisville, New Albany, and Chicago Railway Company; and

Whereas the said Chicago and Block Coal Railroad Company is a corporation organized under an act of the General Assembly of
473 the State of Indiana, approved March 3rd, 1865, and entitled "An act to authorize, regulate, and confirm the sale of railroads; to enable the same to form corporations and to exercise corporate powers and to define their rights, powers, and privileges; to enable such corporation to purchase and construct connecting and branch roads, and to operate and maintain the same and the acts supplemental thereto and amendatory thereof, and is under such statute duly authorized and empowered to locate, construct, own, and operate a line of railroad in the State of Indiana, extending from the Ohio river, in Warrick county, northwardly through the counties of Warrick, Pike, Daviess, Greene, Owen, Clay, Parke, Fountain, Warren, Benton, Jasper, Porter, and Lake to a point on Lake
474 Michigan at or near the mouth of the Calumet river, and said company has actually completed its said railroad from a point in the city of Attica, Fountain county, Indiana, southwardly about twenty-two (22) miles, and has done considerable work in grading other portions of its line in Parke and Clay counties; and

Whereas the line of railroad belonging to said party of the first part and now in process of actual construction, as aforesaid, will, when completed to Attica, intersect in a continuous line with the line of railroad of the party of the second part now actually constructed and in operation southwardly from Attica, so that two such lines of railway can then join, connect, and form one continuous and extended line of railway for the transportation of pas-
475 sengers and freight without any change of cars; and

Whereas both the parties hereto have full authority under their respective charters and the laws of the State of Indiana to connect their said lines of railroad as aforesaid and to merge and consolidate the respective lines of railroad, stocks, franchises, and properties of the said two corporations, so as to form a consolidated corporation upon such terms as may be agreed upon:

Now, therefore, in consideration of the premises and the mutual covenants to be performed by the respective parties hereto, as hereinafter expressed, and for the purpose of securing to the several stockholders of the parties hereto all and singular the advantages and profits which will result from a merger and consolidation of all the stock, railroads, properties, and franchises of the said parties

476 hereto, so as to form but one corporation, the said Chicago and Great Southern Railway Company and the said Chicago and Block Coal Railroad Company do hereby adopt the following basis and articles of consolidation and do agree upon the due execution of these presents to consolidate and merge all and singular their respective railways, stocks, property, choses in action, and assets of every kind, and franchises, so as to constitute thereafter one consolidated corporation on the terms and conditions hereinafter stated, viz:

Article 1.

The name of the consolidated corporation hereby created shall be the Chicago and Great Southern Railway Company.

Article 2.

477 The capital stock of said consolidated corporation shall be three millions of dollars, to be divided into thirty thousand shares of one hundred ($100) dollars each.

Article 3.

The board of directors of said consolidated corporation shall consist of nine persons, to be chosen from among the stockholders at such time and place as may be provided in the by-laws, but until the first regular election for directors of such consolidated corporation the existing board of directors of the present Chicago and Great Southern Railway Company shall by force of these presents constitute the board of directors of the consolidated corporation.

Article 4.

478 On the execution of these articles the stockholders of the two corporations, parties hereto, shall at once become in the consolidated corporation hereby created *to the same* stockholders — amount held by them in either of the present corporations, and all certificates of stock issued by either of the parties hereto and now outstanding shall, as soon as practicable after the taking effect of this consolidation, be retired and cancelled, and on the surrender of any such outstanding certificates there shall be issued to the party so surrendering a certificate for a like amount of shares of the stock of the consolidated corporation.

Article 5.

479 All and singular the lines of railway, assets, choses in action, municipal aid, monies, equipments, tools, rails, ties, machinery, books, papers, and accounts, franchises, and property of any and every kind belonging to either of the parties hereto, and whether held in possession, reversion, expectancy, or remainder, shall *be* at once, upon the execution of these presents, and without any other or further conveyance, deed, or assignment, pass to and become vested in the said consolidated corporation hereby created,

which said last-named corporation shall from thenceforth have conclusive ownership, possession, and domination thereof; and it is expressly agreed that this consolidated corporation hereby created shall have all and singular the powers, privileges, and franchises in any way now belonging to either of the parties, and especially shall be vested with all those granted to corporations organized under
said act of March 3rd, 1865, being the statute under which
480 the party of the second part was organized and is now vested
with its powers.

Article 6.

All and singular the debts, contracts, and engagements of either of the parties hereto are hereby declared to be assumed and shall become the debts, contracts, and engagements of the consolidated corporation hereby created, and it is especially declared that the issue of two million dollars of bonds made by the party of the first part hereto, and secured by a mortgage or trust deed, executed to John C. New, of Indianapolis, Indiana, and dated November 1st, 1881, as the same now appears of record in the counties of Clay, Parke, Fountain, Warren, Benton, Newton, and Jasper, is fully
assumed by the consolidated corporation and the mortgage or
481 trust deed recorded as aforesaid for the purpose of securing
the payment of said bonds and interest thereon shall constitute the first lien upon all and singular the railroad of said consolidated corporation in said last-named counties, from Brazil northwardly to the junction with the Louisville, New Albany, and Chicago railway; also all the lands, equipments, tools, income, property, and franchises as described in such trust deed; and it is expressly agreed between the parties hereto, and it is hereby declared to be one of the conditions and trusts of this consolidation, that as soon as the said consolidated corporation comes into existence it will
forthwith execute and deliver to said John C. New a proper
482 deed of further assurance to carry into effect the true intent
of this article and vest in said trustee a first lien upon the legal title to said entire line of railroad as aforesaid.

Article 7.

All books, vouchers, records, deeds, muniments of title, accounts, and other papers or documents in any way relating to the business or property of either of the parties hereto shall at once be placed in the custody of the secretary of the said consolidated corporation, and said books, vouchers, records, deeds, muniments of title, accounts, and papers shall henceforth in the execution of these presents be taken and considered, so far as may be necessary, as the records,
books, and papers of the consolidated corporation.

483 In order that there shall be no delay in the immediate or-
ganization of said consolidated corporation, it is hereby agreed that, until otherwise ordered by the board of directors of the said consolidated corporation, the common or corporate seal, record-book, and officers of the party of the first part shall be and consti-

tute the corporate seal, record-book, and officers of the consolidated corporation.

In witness whereof and as duly thereto authorized by their respective board of directors and a majority in value of the stock of each of the parties hereto, the said parties of the first and second parts have hereto set each its corporate seal, duly attested by its secretary, and each has caused the signature of its president to be hereto affixed this tenth day of March, A. D. 1883."

484 Henry H. Porter makes response to the claim of the Smith Bridge Company, filed herein, and says:

That this respondent is the owner and holder in good faith and for value of all the bonds issued by the Chicago and Great Southern Railway Company, and that the said bonds and coupons thereto belonging are secured by the original trust deed executed by said corporation to John C. New November 1, 1881, and a supplemental deed to said New April 9, 1883. Both said deeds were recorded according to law in each of the counties wherein said railroad is situate shortly after their respective dates, and thereby became a first lien on the said railroad equipment and appurtenances.

Prior to March, 1883, the Chicago and Block Coal Railroad Company owned in fee-simple and absolutely free of any mortgage or debt a fully constructed and operated line of railroad from Attica to Yeddo. In March, 1883, by articles of consolidation duly filed in the office of the secretary of state of Indiana, a copy of which as Exhibit "A" is made a part of this response, *whereby* the
485 new corporation thereby created acquired all the railroads and property of the two original corporations on the express covenant as recited in the said articles of consolidation; that the trust deed to said John C. New, dated November 1, 1881, should constitute a paramount first lien on the entire property of the consolidated company.

This respondent further shows that the sole consideration for the claim of the said Smith Bridge Company was for the balance due it for work done by it in the original construction of the part of the railroad north of Attica by furnishing and erecting the superstructure of two bridges across Pine creek and the Wabash river. The contracts for doing such bridge work were made in writing with said railway company on October 26th, 1882, and July 24th, 1883, and the work was all done after such dates. Such contracts were made and bridge work done with both constructive and actual notice of the existing recorded mortgage, and the issue of the bonds thereunder. The said Smith Bridge Company put up such bridge superstructure upon piles and stone piers
486 which had been previously constructed by the railway company on its right of way, and which were then and there subject to the lien of said recorded mortgage, and upon the said superstructure being permanently attached to such piles and piers and rails laid over and upon the same it became and has since continued to be an inseparable portion of said railway and subject, as a portion thereof, to said mortgage.

This respondent says that the said bridge company never recorded said contracts or took any lien under the statutes of Indiana, but it did exact and receive the personal security and written obligation of a third party to guarantee and pay the claim due it from said railway company, which personal obligation and security it still holds and has not offered to surrender.

Respondent says that shortly after the date of said original trust deed, viz., in January, 1882, the said Chicago and Great Southern Railway Company negotiated, for value and in the usual
487 course of business, $1,000 000 of the bonds secured by the said mortgage of November 1, 1881, to innocent third persons, who took them in good faith, relying upon their recitals that they constituted a first lien upon the property described in said recorded mortgage, and since that date this respondent, also in good faith and for value, became the owner and holder of such $1,000,000 of bonds.

This respondent further says that the said Smith Bridge Company well knew at the time of the issue and negotiation of said bonds, and made no objection thereto and made no claim of lien or priority as against said bonds or the mortgage, and with like full knowledge said Smith Bridge Company actually received large sums of money on account of its said claim for said bridges and material, paid it directly out of the fund realized from the negotiation of said bonds; for which reasons the respondent insists that the said Smith Bridge Company is in equity estopped and precluded from claiming any lien or priority over the said
488 mortgages of November, 1881, and April, 1883, and the bonds issued thereunder.

Respondent further shows that the fund in court was created exclusively by the sale of the property mortgaged for his benefit and security, and that neither prior to the appointment of a receiver nor subsequent thereto has there been any diversion of current income of the railroad, either by the way of paying interest or making betterments.

This respondent therefore insists that the lien of said mortgages and the equities of the bonds thereby secured ought to be decreed to be paramount to any claim of the said Smith Bridge Company to or upon the proceeds of sale of the mortgaged property, and that such intervening petition against the fund ought to be dismissed at the costs of such intervenor.

McDONALD, BUTTER AND MASON AND
R. B. F. PEIRCE,
Solicitors for Henry H. Porter.

489 EXHIBIT "A."

Articles of consolidation between the Chicago & Great Southern Railway Company, of Indiana, and the Chicago & Block Coal Railroad Company, of Indiana.

This agreement, made between the Chicago & Great Southern Railway Company, a corporation existing under the laws of the

State of Indiana, as party of the first part, and the Chicago & Block Coal Railroad Company, a corporation existing under the laws of the State of Indiana, as party of the second part, witnesseth:

That whereas the Chicago & Great Southern Railway Company is a corporation organized under the general laws of the State of Indiana, and is duly authorized and empowered to locate, construct, own, and operate a line of railroad in the State of Indiana, extending from a point on the Illinois State line, in the county of Lake, in Indiana; thence southwardly to Brazil, in Clay county, Indiana, and such company has its road now in process of actual construction from the city of Attica northwardly so as to
490 form a Chicago connection with the line of railroad belonging to the Louisville, New Albany & Chicago Railway Company;

And whereas the said Chicago & Block Coal Railroad Company is a corporation organized under an act of the General Assembly of the State of Indiana, approved March 3rd, 1865, and entitled "An act to authorize, regulate, and confirm the sale of railroads, to enable purchasers of the same to form corporations, and to exercise corporate powers, and to define their rights, powers, and privileges; to enable such corporation to purchase and construct connecting and branch roads, and to operate and maintain the same," and the acts supplemental thereto and amendatory thereof, and is under such statutes duly authorized and empowered to locate, construct, own, and operate a line of railroad in the State of Indiana, extending from the Ohio river, in Warrick county, northwardly through the counties of Warrick, Pike, Daviess, Greene, Owen, Clay, Parke, Fountain, Warren,
491 Benton, Jasper, Porter, and Lake, to a point on Lake Michigan at or near the mouth of the Calumet river, and said company has actually completed its said railroad from a point in the city of Attica, Fountain county, Indiana, southwardly about twenty-two (22) miles, and has done considerable work in grading other portions of its line in Parke and Clay counties; and

Whereas the line of railroad belonging to said party of the first part and now in process of actual construction as aforesaid will, when completed to Attica, intersect in a continuous line with the line of railroad of the party of the second part now actually constructed and in operation southwardly from Attica, so that two such lines of railway can then join, connect, and form one continuous and extended line of railway for the transportation of passengers and freight without any change of cars; and

Whereas both the parties hereto have full authority under their respective charters and the laws of the State of Indiana to connect their said lines of railroad as aforesaid and to merge and
492 consolidate the respective lines of railroad stocks, franchises, and properties of the said two corporations so as to form a consolidated corporation upon such terms as may be agreed upon:

Now, therefore, in consideration of the premises and the mutual covenants to be performed by the respective parties hereto, as hereinafter expressed, and for the purpose of securing to the several stockholders of the parties hereto all and singular the advantages and profits which will result from a merger and consolidation of all the stock, railroads, properties, and franchises of the said parties hereto, so as to form but one corporation, the said Chicago & Great Southern Railway Company and the said Chicago & Block Coal Railroad Company do hereby adopt the following basis and articles of consolidation and do agree upon the due execution of these presents to consolidate and merge all and singular their respective railways, stocks, property, choses in action, and assets of every kind, and franchises, so as to constitute thereafter one consolidated corporation on the terms and conditions hereafter stated, viz: 493

Article 1.

The name of the consolidated corporation hereby created shall be the Chicago & Great Southern Railway Company.

Article 2.

The capital stock of said consolidated corporation shall be three millions of dollars, to be divided into thirty thousand shares of one hundred dollars ($100) each.

Article 3.

The board of directors of said consolidated corporation shall consist of nine persons, to be chosen from among the stockholders at such time and place as may be provided in the by-laws, but until the first regular election for directors of such consolidated corporation the existing board of directors of the present Chicago & Great Southern Railway Company shall by force of these presents constitute the board of directors of the consolidated corporation.

Article 4.

494 On the execution of these articles the stockholders of the two corporations, parties hereto, shall at once become stockholders in the consolidated corporation hereby created to the same amount held by them in either of the present corporations, and all certificates of stock issued by either of the parties hereto and now outstanding shall, as soon as practicable after the taking effect of this consolidation, be retired and cancelled, and on the surrender of any such outstanding certificates there shall be issued to the party so surrendering a certificate for a like amount of shares of the stock of the consolidated corporation.

Article 5.

All and singular the lines of railway, assets, choses in action, municipal aid, monies, equipment, tools, rails, ties, machinery, books, papers and accounts, franchises, and property of any and every kind belonging to either of the parties hereto, and whether held in possession, reversion, expectancy, or remainder, shall at once upon the execution of these presents, and without any other or further conveyance, deed, or assignment, pass to and become

vested in the said consolidated corporation hereby created,
495 which said last-named corporation shall from thenceforth
have exclusive ownership, possession, and domination thereof; and it is expressly agreed that this consolidated corporation hereby created shall have all and singular the powers, privileges, and franchises in any way now belonging to either of the parties, and especially shall be vested with all those granted to corporations organized under said act of March 3rd, 1865, being the statute under which the party of the second part was organized and is now vested with its powers.

Article 6.

All and singular the debts, contract-, and engagements of either of the parties hereto are hereby declared to be assumed and shall become the debts, contracts, and engagements of the consolidated corporation hereby created, and it is especially declared that the issue of two million dollars of bonds made by the party of the first part hereto, and secured by a mortgage or trust deed executed to John C. New, of Indianapolis, Indiana, and dated November first, 1881, as
the same now appears of record in the counties of Clay, Parke,
496 Fountain, Warren, Benton, Newton, and Jasper, is fully assumed by the consolidated corporation and the mortgage or trust deed recorded as aforesaid, for the purpose of securing the payment of said bonds and interest thereon, shall constitute the first lien upon all and singular the railroad of said consolidated corporation in said last-named counties, from Brazil northwardly to the junction with the Louisville, New Albany & Chicago railway; also all the lands, equipments, tools, income, property, and franchises as described in such trust deed; and it is expressly agreed between the parties hereto, and it is hereby declared to be one of the conditions and trusts of this consolidation, that as soon as the said consolidated corporation comes into existence it will forthwith execute and deliver to said John C. New a proper deed of further assurance to carry into effect the true intent of this article and vest in said trustee a first lien upon the legal title to said entire line of railroad as aforesaid.

Article 7.

All books, vouchers, records, deeds, muniments of title, ac-
497 counts, and other papers or documents in any way relating to
the business or property of either of the parties hereto shall at once be placed in the custody of the secretary of the said consolidated corporation, and said books, vouchers, records, deeds, muniments of title, accounts, and papers shall henceforth, on the execution of these presents, be taken and considered, so far as may be necessary, as the records, books, and papers of the consolidated corporation.

In order that there shall be no delay in the immediate organization of said consolidated corporation, it is hereby agreed that, until otherwise ordered by the board of directors of the said consolidated corporation, the common or corporate seal, record book, and officers of the party of the first part shall be and constitute the corporate seal, record book, and officers of the consolidated corporation.

In witness whereof, and as duly thereto authorized by their respective board of directors and a majority in value of the stock of each of the parties hereto, the said parties of the first and second parts have hereto set each the corporate seal duly attested by its secretary, and each has caused the signature of its president to be hereto affixed this tenth day of March, A. D. 1883."

498 And afterwards, to wit, at the May term of said court, on the 31st day of August, 1886, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now William P. Fishback, Esq., master in chancery, and files his first report on claims herein with accompanying schedule, in the words following, to wit:

499 To the honorable court:

The undersigned, master in chancery, now respectfully reports to the court as follows:

The following report will embrace such of the claims which have been filed in this suit as have been heard and allowed by the master. A future report will contain a statement of claims disallowed and suspended, and will also contain the master's finding upon such claims as have been submitted on the evidence but require some time for examination.

For the convenience of parties and witnesses and to save expense, it was arranged by the master and counsel representing claimants and respondents that evidence should be taken at Attica, Oxford, Goodland, Chicago, La Fayette, and Indianapolis. The volumes containing the evidence indicate what counsel were present and what claims have been considered. Volume I, of 366 pages, contains the evidence submitted by claimants at Attica on the 12th, 13th,
500 and 14th days of May, 1886. Volume II, of 385 pages, contains the evidence taken at Oxford and Goodland by claimants on the 11th and 12th of June, 1886. Volume III, of 205 pages, contains the evidence taken by claimants at Indianapolis at various dates from June 30 to July 6, inclusive. Volume IV, of 530 pages, contains the evidence of the respondents and rebutting evidence taken by the petitioners or claimants at Attica, Oxford, Goodland, and Indianapolis in August, 1886. Volume V, of — pages, contains the evidence taken at Chicago and Indianapolis in the matter of the intervening petitions of the Bristol & South Wales Car and Wagon Co., Beach, Barnard & Co., Crerar, Adams & Co., B. A. Stewart & Co., Brown, Pettibone & Kelly, Thomas R. Lyon, agent; John McAuley, Fred. F. Lacey, Alexander J. McDonald, White's Golden Lubricator Co., Hosford & Sons, Olivers, Bro. & Phillips, George B. Carpenter & Co., H. B. Scutt & Co., Frederick D. Raymond, Rand, McNally & Co., The Ohio Falls Car Co., The John Morris Co., John A. Kent, Thomas R. Reeves, J. C. Mentzer, Fairbanks, Morse & Co.,

Nathan & Dreyfus, Chicago Journal and Bearing Works, Warren Springer, Hugh Lowe, Western Bank Note and Engraving Company, Wert D. Walker (Marsh, Binghim & Co., Miller & Christy), The Smith Bridge Company, W. P. Reese, J. W. Mills, Pittsburgh Bessemer Steel Co., James McCalmet, Volney D. Irwin, Martha Julian, the right-of-way claims of Hall, Atkinson, Boyer, and McCord, The Cleveland Rolling Mill Co., and in the matter of claims against The Union Coal Co., which said evidence I file herewith and make a part of my report. I also file and make a part of this report the unattached exhibits which were introduced in evidence and referred to by the witnesses in their evidence. 501

Before proceeding to the hearing of these claims, the times for the hearing were fixed by notice sent by the master to attorneys representing the various claimants, who in nearly every instance were present and conducted the examination, as the evidence taken down will show. After all claims represented by counsel were heard the master, by letter or postal card, notified other claimants by post that they could put in any proof they desired before the master at Indianapolis upon days stated in said notices. The result was that nearly every claimant whose claim had been filed was heard and allowed to put in all the evidence he desired to present. In some instances claimants notified the master that the amount of their claims would not justify the expense of personal attendance at the hearings, and in such cases they were notified by the master that if they would make affidavit of services performed in the construction or operation of the railway the master would look at the pay-rolls and determine the amounts due them therefrom, if they were content to abide the result; and quite a number of claims were disposed of in that way, allowing the claimants what the pay-rolls of the corporation showed to be due them. After the evidence was all in the master gave notice to counsel for claimants and respondents that he would hold a hearing at Indianapolis, beginning on the 16th of August and continuing from day to day until all claims should be heard and disposed of. The claims were taken one by one and the evidence considered and findings and allowances announced. The schedule marked Schedule A herewith filed, consisting of fourteen sheets, contains a list of claims with the amounts allowed to each, arranged alphabetically; and I recommend that the amounts shown by said schedule be paid the several claimants or their attorneys of record out of the fund in court, if the court shall decide that such claims are a lien prior in equity to the lien of the mortgage bonds. 502 503

After hearing the evidence, consultation was had with counsel representing the claimants and respondents as to the propriety of subdividing the claims, showing what proportion, if any, of the labor or material and supplies furnished went into construction, and what portion was used in operating the Chicago & Great Southern Railway.

504 It has been agreed that a general statement might be made that all of the claims contained in the schedule accompanying this report and allowed by the master are construction or oper-

ating claims, and that nearly all are construction claims. If, in the further progress of the suit, after hearing all exceptions to this report, it shall be deemed necessary to make a strict classification, as required by the terms of the decree, the master can do that by means of theevidence already taken.

I desire to make special mention of a few of the claims allowed and named in the schedule.

Albaugh, Jacob S.:

This claim was partly for services rendered the company, the larger amount being for services performed for contractors Hammond, Marsh, and Clark. The amount claimed against contractors—$237.63—is suspended until the court shall make some order as to what disposition shall be made of claims filed in this
505 suit. not against the property or the Chicago & Great Southern Railway Company directly, but against the contractors who did construction work, and who have filed claims for large balances alleged to be due to them.

Bly, John:

The amount of $69.33 is allowed to him for labor, and two claimants, Timberlake and Barnett, allege that Bly assigned the claim, or a portion of it, to them. There is a number of claims in this condition, and it is for the court to determine how far it will enter upon the business of the subdivision and distribution of such claims. Mr. Bly also has a claim against contractors, and the remarks made under the head of the Albaugh claim will apply to this.

Brown, J. W.:

He also has a claim against the contractors, not included in the amount allowed him.

Bonebrake, O. C.:

506 The amount allowed him excludes the sum of $14.50, which seems to be a claim against the Union Coal Company. As to all claims against the Union Coal Company, the master will make a special report, submitting the question to the court whether upon the facts shown by the evidence these claims can be made a charge against the fund in court.

Bonebrake, Julia:

$34.34 of this claim is suspended for the reason last afore given.

Boggs, D. C.:

This claimant has a balance of $12.60 against McCarty, contractor.

Barco, John:

A portion of the amount allowed him is claimed by the claimants Barnett and Bell.

Butters, J. M.:

A portion of this is claimed by Keller, Craig & Co.

507 Bengston, Edward:

Henry Miller claims a portion of this.

Bengston, Otto:

The amount allowed this claimant is $212.69, of which John C. Perry claims $32.50.

Brown, Sarah:

The amount allowed her was $300 for right of way, which is to be paid when a conveyance is executed.

Cochran, Robert:

This claimant has a balance of $161.99 against *against* the Union Coal Company.

Crane, J. D.:

The amount allowed him is $9.05, but his claim is for a much larger amount, which is coming to him, if at all, through William McIntosh and Irons, a contractor.

Dunlap, Isaac:

The amount allowed him is $90.08. Thomas Hemphill
508 and Mary Kelley claim that they are entitled to a part of this.

Dextra, John J.:

The amount allowed him is $24.99, of which S. H. Wilson claims a part.

Calloway & Clark:

The amount allowed upon this claim $812.01. The balance of their claim is against the Union Coal Company, and will be disposed of in a special report covering that class of claims.

Grimberg, Barthel:

The amount allowed this claimant is $21.78. Albaugh claims a portion of this.

Hemphill, Thomas:

The amount allowed him is $19.02. The balance of his claim is against the receivers, and will be disposed of in a special report.

Hirsh, Wolf:

The amount allowed him is $7.65. The balance of his claim, $18.81, is against the receivers.

509 **Kent, John A.:**

The amount allowed this claimant is $851.87. The balance of this claim, $190, for wire is suspended, and will be disposed of in a future report.

McIntosh, Angus:

The amount allowed him is $119.79, $27.60 of which is claimed by J. D. Crane, whose claim has already been mentioned.

Miller, Henry:

The amount allowed him is $5.00. He claims a balance, $13.85, against Edward Bengston, whose claim has already been mentioned,

Nelson, Hans:

The balance shown to be due him on the pay-rolls is $271.14. Of this amount, $18.76 is claimed by Kelley, $14.29 by Lank & Son, $77.04 by Philip Martin.

Peacock & Martin:

The amount allowed them is $44.68. The balance, $26.50, seems to be a claim against the Union Coal Company, which will be disposed of in a special report.

510 **Reed, H. J.:**

There is a duplicate claim filed, one by T. F. Davidson and one by H. J. Reed. It is admitted that the amount due both of them is $179.00, of which $140 is to go to T. F. Davidson and $39.00 to H. J. Reed.

Stevens, Benj. F.:

$6.00 is the amount allowed. The balance of the claim is against contractors and the Union Coal Company, which will be disposed of in a future report.

Sparks, Joseph T.:

The amount allowed is $16.55. The balance of the claim, $84.67, is against Hammond, a contractor.

Springer, Warren:

$958.29 is for material, work, and labor performed in repairing machinery. The material is in the possession of the intervenor ready for delivery, and should be delivered before the claim is paid.

Scott, Elizabeth H.:

511 The amount allowed her is for right of way, and should not be paid until a release is executed.

Timberlake & Co.:

The amount allowed is $105.25. The balance is a claim against Bly.

Tittsworth, Thomas:

$27.12 is the amount allowed, and $60.63 is against the Union Coal Company, which will be disposed of hereafter.

Winney, Henry:

$47.29 is the amount allowed, of which Hemphill claims $3.00.

Wilkinson, Barbara:

The amount allowed her is for right of way, which is to be paid upon the execution of a release.

Respectfully submitted,

W. P. FISHBACK, *Master.*

512 "SCHEDULE A."

Schedule showing names of claimants and amounts allowed to each. Filed with master's report August 31st, 1886.—W. P. Fishback, master.

			Remarks.
Andrews, J. J.	$27	18	
Argen, John	40	00	
Attica Bridge Co	74	72	
Adler, Lewis	20	00	
Adler, Lewis	5	00	
Anderson, Peter	20	75	
Austin, John	54	29	
Armentrout, Chas. J.	20	00	
Austin, Peter	71	34	
Albaugh, Jacob S.	63	80	See special notice in report.
Acres, James	19	12	
Allen, John	33	75	
Baker, Andrew	42	00	
Bly, John	69	33	See special notice in report.
Barnett, Rob't	65	68	
Brown, J. W.	72	35	See special notice in report.
Boyd, J. L. and E. C.	148	25	
Bonebrake, O. C.	162	82	See special notice in report.
Bonebrake, Ezra	7	00	
Bonebrake, Julia	23	48	See special notice in report.
Boggs, D. C.	29	40	" " " "
Barco, John	175	08	" " " "
Benagan, James	8	12	
513 Bullard, Mrs. Abbie A.	105	00	
Beach, Barnard and Co.	81	00	
Brown, Pettibone and K.	365	38	
Barrett, John	52	42	

Bryant, Wash'n, Sr.	192	75	
Briar, Mark J.	27	55	
Butters, J. M.	16	59	See special notice in report.
Byard, James	12	05	
Benedict, V. M.	60	45	
Bengston, Chas.	56	00	
Bengston, Edward	70	00	" " " "
Burdett, W. D.	22	85	
Brown, Sarah	300	00	" " " "
Bengston, Otto	212	69	" " " "
Brooks, Louis	35	79	
Brenner, Jno. J.	153	00	
Buchanan, Sam'l W.	51	05	
Beavers, Thomas	198	52	
Bear, John W.	77	25	
Brewster, Geo. R.	196	63	
Cochran, Rob't.	343	66	" " " "
Cronin, Morgan	56	97	
Cronin, Michael	120	40	
Crosswell, J. K.	260	00	
Carlson, Swan	21	65	
Crane, J. D.	9	05	See special notice in report.
514 Condon, John	125	23	
Curtis, J. J.	545	86	
Coburn and Jones	2,517	92	
Collier and Lank	1,552	93	
C. R. I. and P. R'y Co.	130	88	
Carpenter, Geo. B., and Co.	158	80	
Cleveland R'y Mill Co.	29,643	97	
Crerar, Adams and Co.	7,809	94	
Casey, P. F.	32	10	
Chicago Journal Bearing Works	11	78	
Cunningham and Temple	790	85	
Curtis, L. C., and Co.	31	60	
Carnahan, Jas. B.	98	88	
Cook, Fred'k	79	25	
Connerton, John	17	75	
Champley, Robt. T.	3	00	
Carney, Jas. E.	3	00	
Cobus, Ana	48	62	
Carson, Charles F.	106	72	
Cassaday, Michael	27	17	
Constantine, Henry Emory	13	00	
Chamberlain, John	26	92	
Cincinnati, Indianapolis, St. Louis & Chicago r'y	359	66	
Davidson, Louis	63	60	
Downey, Simon D.	113	75	
Dice, George	60	66	
De Camp, Joseph	183	25	

515	Day, Samuel B.	38 30	
	Drummond, John	10 80	
	Dunlap, Isaac	90 08	See special notice in report.
	Denneston, Mark	25 62	
	Dextra, Peter	7 50	
	Dextra, Jno. J.	24 99	" " "
	Dixon, Andrew	84 75	
	De Young, Ainte	66 87	
	Drake Almeron	12 00	
	Erzinger, John C.	154 00	
	Ereckson, P. G.	148 00	
	Ellsworth Coal Co.	147 82	
	Edison, A. B.	12 20	
	Ellis, I. N.	29 60	
	Eberly, Samuel	16 50	
	Fisher, John	23 72	
	Fry, Stephen	1 65	
	Foy, E.	13 15	
	Fosdyke, Walter L.	237 71	
	Fairbanks, Morse and Co.	855 16	
	Fitsimmons and Connell	2,186 88	
	Fauster, David		88 02
516	Given, J. B.	74 22	
	Galloway and Clark	812 01	See special notice in report.
	Gass, John W.	25 50	
	Greene, Hansel J.	713 27	
	Green and McCurry	14 00	
	Gentry, Wm. S.	278 20	
	Gordon, George	127 87	
	Gray, Thomas J.	86 48	
	Gray, Thomas J.	95 01	
	Gaylord, Joseph H.	12 09	
	Grimberg, Barthel	21 78	" " "
	Grimberg, John	45 37	
	Gordon, Helen and John	60 00	
	Hirsch, Wm. F.	55 00	
	Huddle, A. F.	22 50	
	Hemphell, Thos.	19 92	See special notice in report.
	Hammond, Frank	18 00	
	Hirsh, Wolf	7 65	" " "
	Harty, Edward J.	100 00	
	Hershberger and Gookins	116 68	
	Hess and Harvey	21 40	
	Haverly, Crist N.	49 83	
	Heiner, T. H.	27 25	
	Hood, Henry	95 00	
	Hosford and Sons	84 14	
	Howell, Frank	74 87	
	Hall, Joseph R.	38 00	
517	Hamilton, James F.	59 25	
	Hufty, Geo. G.	11 50	

	Holm, Chas.	12	80	
	Hamilton, John A.	62	00	
	Hopkins, W. A.	17	64	
	Hart, Michael	27	62	
	Jones, James	93	74	
	Jarrett, James	65	83	
	Johnson, E. E.	4	72	
	James, David	17	83	
	Johnson, John A.	21	75	
	Jordan, Louis H.	95	10	
	Jackway, A. G.	680	85	
	Kiff, Clinton H.	66	50	
	Keller, Craig and Co.	552	06	
	Keen, O. B.	12	78	
	Kent, John A.	851	87	See special notice in report.
	Kelly, Mary	109	55	
518	Lebo, Jacob B.	122 35	30 75	
	Lighter, John	524	19	
	Lash, Fred	154	80	
	Lindley, C. V.	100	15	
	Lawrence, Anton	147	65	
	Lafayette Car Works	269	93	
	Lake Erie and Western r'y	1,216	34	
	Lyon, Thos. R., ag't	12	20	
	Lowe, Hugh	200	32	
	Looney, William H.	130	72	
	Lereque, Moses	27	00	
	Larson, Edward	359	06	
	Lyons, James H.	27	75	
	McElroy, Emily	450	00	
	Marshall, Andrew	19	75	
	McCarty, James	630	49	
	Millard, Harrison	30	11	
	Mentzer, John C.	39	58	
	Melander, August	603	74	
	McDonald, Alex'r J.	1,306	98	
	McIntosh, Angus	119	79	See special notice in report.
	Millford, Milton F.	34	66	
	Mills, John W.	650	87	
	McDonald, James T.	100	00	
	Morgan, Samuel	31	99	
	Miller, Wm. S.	196	28	
	Miller, T. H.	4	53	
	Miller, Henry	5	00	See special notice in report.
519	Marsh, Bingham R. and Ransom	1,329	60	
	Morris, John, Co.	301	80	
	Mueller and Christy	1,142	23	
	McCalment, James.			
	McAuley, John	94	28	

	Miller, F. H.	4	06	
	McDonald, Thos.	17	10	
	Metzker, John	10	00	
	Mullen, A. J.	57	04	
	McCain, George	14	00	
	McIntosh, Wm.	414	95	
	Mackin, Thos.	104	00	
	Monegal, J. E.	35	00	
	Masury and Son	160	78	
	McConnell, W. E.	260	84	
	Maddux, Thos.	8	25	
	Maim, Phillip	170	90	
	McConnel, W. J.	43	07	
	McLaughlin, Jonathan	104	62	
	Mesner and Smith	49	85	
	Myers, W. H.	15	00	
	Mooney, Martin	31	30	
	Nelson, Hans	271	14	See special notice in report.
	Nathan and Dreyfus	151	20	
	Nat'l Railway Pub. Co.	40	00	
	Novelty Iron Works	979	00	
	Nutt, Chas. A.	70	00	
	Nutt, Samuel N.	92	50	
	Nelson, Magnus	10	50	
520	Oglum, Frank B.	$33	75	
	Olestrom, A. G.	53	00	
	Oleson, Alfred	103	83	
	Oliver Bros. and Phillips	675	36	
	Peacock and Martin	44	68	See special notice in report.
	Peters, Frank M.	31	25	
	Peters, Charles J.	185	00	
	Peters, F. H.	366	68	
	Petiff, Marshall	48	10	
	Pinkerton Detective Agency	208	00	
	Pittsb'g Bess'r Steel Co.	12,944	20	
	Peterson, John	49	37	
	Powell, Jas. A.	20	00	
	Parnow, William	81	24	
	Pharis and Burditt	13	00	
	Paulson, John	37	40	
	Plantz, Herman	69	24	
	Petitt, A	41	45	
	Reed, H. J.	179	00	See special notice in report.
	Ryan, Michael	53	00	
	Robinson, Sam'l M.	25	55	
	Runyan, Arthur	47	00	
	Randals, Louis H.	21	45	
521	Rice, T. N.	123	50	
	Rand, McNally and Co.	284	25	
	Raymond, F'd'k D.	750	00	

	Roos, Oscar	32	62	
	Romfield, Wm.	13	37	
	Roberts, Arthur	232	22	
	Roberts, H. C.	58	25	
		56	10	
	Rasmussen, John	80	36	
	Ripple, John J.	87	53	
	Robertson, C.	13	08	
	Ray, Arthur O.	31	43	
	Smith, Henry	2,113	00	
	Stephens, Benj. F.	6	00	See special notice in report.
	Sheets, Fred.	138	71	
	Stancomb, Wm. J.	84	59	
	Stephenson, Benton	92	12	
	Stillinger, B. C.	69	15	
	Schart, Hiram M.	303	88	
	Smith Bridge Co.	20,900	24	
	Smith, Robert	3	00	
	Smith, A. H.	7	50	
	Shiller, August	48	12	
	Sparks, Joseph T.	25	50	See special notice in report.
	Sargent, J. W.	16	55	
	Spraker, Chas. L.	299	90	
	Stevens Coal and M. Co.	193	00	
522	Stephenson, Hiram	9	75	
	Seward, A. D.	31	25	
	Springer, Warren	958	29	See special notice in report.
	Scutt, H. B. and Co.	1,085	30	
	Stuart, D. A.	205	51	
	Steele, Edwin C.	13	70	
	Scott, Wm. M.	24	87	
	Scott, Elizabeth H.	325	00	See special notice in report.
	Smeisser, Christopher	12	50	
	Smith, Hiram	141	00	
	Sheedy, James	39	00	
	Swan, James	20	60	
	Swan, William	4	50	
	Seward, Adam D.	31	00	
	Skipper, John	55	12	
	Steep, W. H.	16	12	
	Spies, Samuel	137	49	
	Strawbridge, J.	1	99	
	Toleson, Charles	14	12	
	Timberlake and Co.	105	25	See special notice in report.
	Tittsworth, Thos.	27	12	“ “ “
	Thornton, Benjamin	109	96	
	Tuberty, Johanna	327	08	
	Truson, J. B.	20	60	
523	Warbritten, Felix	226	80	
	Woods, N. C.	209	40	
	Ward, John	130	41	

Walsh, John	45	40	
Wallace, W. DeWitt	350	00	
Western Bank Note Co.	825	00	
White's Golden Lub'r Co.	53	19	
Waldrip, Edward	33	00	
Waldrip, Levi	132	12	
Waldrip, Isaac	6	35	
Wilmoth, Joel	102	70	
Winges, Casper	103	75	
Werner, Carl	113	36	
Winney, Henry	47	29	See special notice in report.
Wilkinson, Mrs. Barbara	250	00	" " "
Wilson, Henry	15	20	
Wilson, S. H.	18	12	
Ward, Peter H.	50	00	
Wallace Bros.	47	25	
Wentwood, Samuel	61	87	
Weeks, Oliver	8	50	
Watts, Thomas	35	30	
Walton, W. G.	1	50	
Young, Wm. J.	108	54	
Young, Andrew	17	87	
Zeis, Conrad H.	232	47	

524 And afterwards, to wit, at the May term of said court, on the 28th day of September, 1886, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Henry H. Porter, the complainant, by McDonald, Butler & Mason and R. B. F. Peirce, his solicitors, and files his exceptions to the report of the master filed herein on the 31st day of August, 1886, and said exceptions are in the words following, to wit:

525 Comes now Henry H. Porter, the complainant herein, and files his exceptions to the report of William P. Fishback, master in chancery, filed herein on August 31, 1886, so far as said report relates to and allows the claim of the Pittsburgh Bessemer Steel Co. (Limited), and for ground of exception to such claim, and to any allowance thereof out of the proceeds of sale now in the registry of the court, the said exceptant says:

First. That the evidence shows the claim of said steel Co. was for rails furnished for the original construction of the railroad of said first Chicago & Great Southern Railway Co. north of Attica long after the execution and record of said mortgage to said John C. New, trustee, and with full notice thereof, and after divers bonds had been negotiated for value thereunder; that said steel Co. did not obtain, or attempt to obtain, any lien under the laws of Indiana for the value or price of such rails, and, therefore, as such subsequent creditor the said steel Co. is not entitled to any payment out of the fund in court in preference to the complaint as such bondholder, and the master should have so reported.

526 Second. For that the evidence shows that the debt due said steel Co. was not a debt of the Chicago & Block Coal Railroad Company, or any lien upon the property of the latter, and, therefore, has no equity to be paid out of the proceeds of the sale of that part of the railway south of Attica, and the master should have so reported.

Third. For that the evidence shows that the said steel Co. demanded and received for its said debt the personal obligation and security of a third person, which it still holds, and, therefore, the master should have reported that the said steel Co. was not entitled in equity to any lien upon the railway property, and was not entitled to any payment out of the proceeds of sale in preference to the complainant as a bondholder.

Fourth. The record shows that the entire net proceeds of sale of the railway does not amount to a sum equal to the principal and interest of the debt for which the bonds issued under the mortgage to John C. New, trustee, were pledged in January, 1883, to Drexel, Morgan & Co. for value; also that the complainant, as surety upon said debt to Drexel, Morgan & Co., having paid the same, is in equity subrogated to all the rights, liens, and franchises of said
527 Drexel, Morgan & Co. to the extent of the debt which said surety paid and interest and expenses, for which reason the master should have so reported and found that the complainant was entitled to the entire net proceeds of sale now in court in preference to the claim of said steel Co.

Wherefore the complainant, as such bondholder, prays that the court will set aside such report and allowance and hold the same for naught and order that the entire net proceeds of sale shall be paid over to the complainant.

McDONALD, BUTLER & MASON,
R. B. F. PIERCE,
Solicitors for Henry H. Porter.

528 Comes now Henry H. Porter, the complainant herein, and files his exceptions to the report of William P. Fishback, master in chancery, filed herein on August 31, 1886. So far as said report relates to and allows the claim of Crerar, Adams, & Co., and for grounds of exception to such claim, and to any allowance thereof out of the proceeds of sale of the railway property now in the registry of the court, the said exceptant says:

First. That the evidence shows the debt due said Crerar, Adams & Co. is for material and supplies furnished in 1883 and 1884 for the original construction of the first Chicago & Great Southern railway north of Attica; that the said Crerar, Adams & Co. extended credit to such railway company long after the execution and record of said mortgage to John C. New, trustee, and with full notice thereof, and after $1,000,000 of bonds had been issued thereunder and were in the hands of innocent holders for value; that said Crerar, Adams & Co. never obtained, or attempted to obtain, any lien upon the said railway for such material and supplies under the laws of Indiana, and therefore said Crerar, Adams & Co., as such subsequent creditors, are not in equity entitled to any payment out of the proceeds of sale in preference to the complainant as such bondholder, and the master should have so reported. 529

Second. For that the evidence shows that the said claim of Crerar, Adams & Co. was not debt of the Chicago & Block Coal Railroad Company, or any lien upon the property of the latter, and therefore has no equity to be paid out of the proceeds of the sale of that part of the railway south of Attica, and the master should have so reported.

Third. The record shows that the entire net proceeds of sale of the railway does not amount to a sum equal to the principal and interest of the debt for which the bonds issued under the mortgage to John C. New, trustee, were originally pledged in January, 1883, to Drexel, Morgan & Co. long prior to the creation of any debt to said Crerar, Adams & Co., and also that the complainant, as surety upon said debt to Drexel, Morgan & Co., having paid the same, is in equity subrogated to all the rights, liens, and franchises of said Drexel, Morgan & Co. to the extent of the debt which said surety paid and interest and expenses, for which reason the master should have reported that the complainant was in equity entitled to the entire net proceeds of sale now in court in preference to the claim of said Crerar, Adams & Co.

Wherefore the complainant, as such bondholder, prays that the court will set aside such report & allowances & hold the same for naught & order that the entire net proceeds of sale shall be paid over to the complainant.

McDONALD, BUTLER & MASON,
R. B. F. PEIRCE,
Solicitors for Henry H. Porter.

530 Comes now Henry H. Porter, the complainant herein, and files his exception to the report of William P. Fishback, master in chancery, filed herein on August 31, 1886. So far as said report relates to and allows the claim of the Smith Bridge Company, and for ground of exception to such claim and to any allowance thereof out of the proceeds of sale now in the registry of the court, the said exceptant says:

First. That the evidence shows the claim of said bridge company was for the timber and iron superstructure of a bridge across the Wabash river, furnished for the original construction of said road in 1883, long after the execution and record of the mortgage to John C. New, trustee, and with full notice thereof and with full notice that said bonds secured by said mortgage were outstanding for value; that said bridge company did not obtain or attempt to obtain any lien for such bridge under the laws of Indiana, and therefore said bridge company, as such subsequent creditor, is not entitled in equity to any payment out of the fund in court in preference to the complainant as such bondholder, and the master should have so reported. 531

Second. For that the evidence shows that the debt due said bridge company was not a debt of the Chicago & Block Coal Railroad Company or any lien upon the property of the latter, and therefore has no equity to be paid out of the proceeds of the sale of that part of the railway south of Attica, and the master should have so reported.

Third. For that the evidence shows that the said bridge company demanded and received for its said debt the personal security and obligation of a third person, which it still holds, and therefore the master should have found and reported that the said bridge company was not entitled in equity to any lien upon the railway property and was not entitled to any payment out of the proceeds of sale in preference to the complainant as a bondholder.

Fourth. The record shows that the entire net proceeds of
532 sale of the railway does not amount to a sum equal to the
principal and interest of the debt for which the bonds issued under the mortgage to John C. New, trustee, were pledged in January, 1883, to Drexel, Morgan & Co. before any debt had accrued to said bridge company; also that the complainant, as surety upon said debt to Drexel, Morgan & Co., having paid the same, is in equity subrogated to all the rights, liens, and priorities of said Drexel, Morgan & Co. to the extent of the debt which said surety paid and interest and expenses, for which reason the master should have reported that the complainant was in equity entitled to the entire net proceeds of sale now in court in preference to the claim of said Smith Bridge Company.

Wherefore the complainant, as such bondholder, prays that the court will set aside such report and allowance and hold the same for naught and order that the entire net proceeds of sale shall be paid over to the complainant.

McDONALD, BUTLER & MASON,
R. B. F. PEIRCE,
Solicitors for Henry H. Porter.

533 Comes now Henry H. Porter, the complainant herein, and files his exceptions to the report of William P. Fishback, master in chancery, made on August 31, 1886. So far as said report relates to the claim of the Cleveland Rolling Mill Co., and for ground of exception to such claim and to any allowance thereof out of the sale proceeds now in the registry of the court, the said exceptant says:

First. That the evidence shows the claim of the Cleveland Rolling Mill Co. is for rails delivered in November and December, 1881, and used in the original construction of said first Chicago & Great Southern railway north of Attica; that said rolling-mill company never obtained or attempted to obtain any lien under the laws of Indiana for the value or price of said rails, and that the said rolling mill Co. delivered said rails with full notice of the record of the mortgage to John C. New, trustee, and therefore said rolling-mill
company is not entitled to any payment out of the proceeds
534 of sale in preference to the complainant's rights as a bond-
holder under said mortgage, and the master should have so found and reported.

Second. For that the evidence shows that the claim of said rolling-mill Co. arose prior to the consolidation in 1883 of the first Chicago & Great Southern railway with the Chicago & Block Coal railway, and such claim was not a debt of or a lien upon the said last-named corporation or its property, and the master should have so reported.

Third. The record shows that the entire net proceeds of sale now in court do not amount to the principal and interest of the debt for which the bonds issued under the mortgage to John C. New, were pledged in January, 1883, to Drexel, Morgan & Co., and further that the complainant as surety on such debt was compelled to and did pay the entire amount thereof to said Drexel, Morgan & Co., and in equity became thereby subrogated to all the liens and priorities of said Drexel, Morgan & Co., and the master should have so
535 reported and found that the complainant was entitled to receive the entire net proceeds of sale in preference to said rolling-mill Co., who knew of said pledge, and made no claim of priority against the same, and received a portion of the advance made by said Drexel, Morgan & Co. on the pledge of such bonds.

Wherefore the complainant prays that the said report may be set aside and held for naught, and that the court will enter a decree directing the payment of all the net proceeds of sale to the complainant in preference to any payment to said rolling-mill company.

McDONALD, BUTLER & MASON,
R. B. F. PEIRCE,
Solicitors for Henry H. Porter.

536 And afterwards, to wit, at the May term of said court, on the 8th day of October, 1886, before the Honorable Walter Q. Gresham and the Honorable William A. Woods, judges as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now William P. Fishback, Esq., master in chancery, and files his report on the intervening petition of Volney Q. Irwin *et al.* in the words following, to wit:

537 In the Matter of the Claims of VOLNEY Q. IRWIN and JAMES McCALMET.

To the honorable court:

The undersigned, master in chancery, now respectfully reports to the court as follows:

The evidence shows that Irwin made a contract to do the grading on a portion of the road between Oxford and Attica, and did work in accordance therewith.

McCalmet also made a similar contract with the company, and did the work thereunder.

Each of the claimants was entitled to a mechanics' lien on the road under the statutes of Indiana. They duly recorded the notices, as required by law, and obtained their separate statutory liens on the road. They brought suits in the Warren circuit court to enforce their respective liens.

That court, on the 12th day of April, 1884, rendered [a] decree in favor of Irwin, finding due him $11,450.30, and finding that he had a statutory lien on that part of the road in Warren county, and ordering a sale thereof to satisfy the lien.

On the 12th day of April, 1884, the same court rendered a similar decree in favor of McCalmet for $1,392.10, and ordered a sale of the property covered by his lien to satisfy that debt.

538 On the — of —— separate sales were had under these two decrees, and the sheriff in Warren county sold the specific portions of the road described in the decrees to Volney Q. Irwin, and the sheriff, as required by the decrees, delivered to Irwin certificates of purchase, reciting that he was entitled to a deed if the property should not be redeemed within a year.

Within the year permitted by law the bondholders, through John C. New, as trustee, advanced the money required by law to redeem the property, paid the same into the clerk's office of Warren county, and that officer executed the usual certificates of redemption required by law.

In addition to the facts above found, the master further finds and reports that all of the work done by McCalmet and the lien filed by him therefor was in Warren county, Indiana.

That the contract made between the railway company and Irwin was made before the date of the mortgage in suit, and that Irwin commenced work under his contract before the mortgage was recorded and before he had notice of it.

That something over three miles of the work which Irwin did on
the said railway lies in Benton county, and that Irwin filed
539 a separate lien under the statutes of Indiana in Benton
county therefor, which, while it was included in the complaint filed in his suit in the Warren circuit court, was, for some reason, not disclosed in the record, not foreclosed in said suit. All that was ordered to be sold and all that was sold by the decree taken in that suit was that part of the line in Warren county. Irwin bid off that part of the road in Warren county, under the order of sale in that suit, for the sum of $500, and that part of the railroad in Warren county, on the McCalmet judgment for said McCalmet, for the sum of $38.40. Those were the sums, with interest and costs, paid by the said John C. New heretofore referred to in this report.

The master further finds and reports that the said John C. New was the trustee named in the mortgage for the bondholders who were secured under the provisions of said mortgage for the bonds which they held, which mortgage was made, executed, and delivered by the railway company of the day and date appearing in the cross-bill filed by the complainant, Henry H. Porter, in this suit.

The master further reports that at the time Irwin performed the
work the right of way over that part of the road where Irwin
540 performed his work had not been formally released to or ac-
quired by the railway company, but that the company and

the contractors had entered thereon and were constructing the road under a parol license given by the owners of the land for that purpose. The value of that portion of the road lying in Benton county is sufficient to pay and satisfy the amount found to be due to Irwin in this report.

The effect of the redemption by New for the bondholders, as declared by the Indiana statute providing for redemption from sales upon execution of foreclosure, unquestionably was to give New a lien for the amount of the redemption money prior to any claim that Irwin or McCalmet might assert, and it left the liens of Irwin and McCalmet for the balance of their debts and judgments unsatisfied.

I therefore report and find that Irwin is entitled to an allowance, to be paid out of the fund in court for the amount found to be due him in the decree in the Warren circuit court, less the $500 paid in by John C. New as redemption money.

I also report and find that the claimant McCalmet is entitled to an allowance, to be paid out of the fund in court, for the sum 541 adjudged in his favor by the said Warren circuit court, less the $38.40 paid in by John C. New as redemption money.

It is insisted by the respondents that as the rights and liens of the claimants, Irwin and McCalmet, have been finally adjudicated by a court of competent jurisdiction long before the institution of the suit in this court or the State court from which it was removed, and that as the claimants enforced their said liens by a sale of a portion of the property covered thereby prior to the bringing of the receivership suit, the bondholders in whose interest said property was redeemed from said sales are entitled to hold the railway free from any lien of Irwin and McCalmet. The master finds and reports that such is not the law upon the facts shown by the evidence.

Respectfully submitted.

W. P. FISHBACK, *Master*.

And at the same time, on said 8th day of October, 1886, said master files his report on the intervening petition of the Smith Bridge Company herein in the words following, to wit:

542 In the Matter of the Claim of the SMITH BRIDGE COMPANY.

To the honorable court:

The undersigned, master in chancery, to whom this cause was referred, now respectfully makes the following supplemental report:

After the date of the record of the mortgage by the railway company to John C. New, trustee, the Smith Bridge Company made a contract with the defendant railway company, dated October 26th, 1882, for the construction of a bridge over the Wabash river at Attica, and on the 24th day of July, 1883, made another contract with the defendant railway company for the construction of a bridge across Pine creek, near Attica. Appended to the first contract was the following:

"CHICAGO, *Dec.* 2, 1882.

"For value received I hereby guarantee the due performance by the Chicago and Great Southern Railway Company of all the
543 covenants and payments by it agreed to be performed in the foregoing contract.

"HENRY CRAWFORD."

Appended to the second contract is the following:

"TOLEDO, OHIO, *Dec.* 18, 1883.

"For value received I hereby guarantee the due performance by the Chicago and Great Southern Railway Company of all the covenants and payments by it agreed to be performed in the foregoing contract.

"HENRY CRAWFORD."

The balance due under these two contracts, exclusive of interest, has been heretofore reported by me in my report filed August 31st, 1886, at $20,900.24. The question of interest is reserved for consideration and determination by the court, and if the court shall determine that the claimant is entitled to interest the computation can be made without delay.

544 Under these contracts it is admitted that the bridge company built the bridges, which were accepted by the proper officers of the company, and the amount stated is the balance due for the work. After the completion of the work, when the bridge company were pressing the railway company for payment, Mr. Crawford gave his individual check for $21,637.54, a copy of which is as follows:

"No. 0501. CHICAGO, *April 3rd*, 1884.

First National Bank, pay to the order of the Smith Bridge Company twenty-one thousand six hundred thirty-seven and $\frac{54}{100}$ dollars.

"H. CRAWFORD."

(Endorsed on the back:) Protested for non-payment. 4–3; 84. 1st N. B."

In narrative form on the back of this check appears the following endorsement:

"Pay to the order of C. Doolittle, cashier.
The Smith Bridge Company.
545 WM. S. DALY, *Sec'ty.*

Pay to H. R. Symonds, cas., or order, for account of Merchants' Nat'l Bank.
Coll'n, 8381.
Toledo, Ohio.

CHAS. C. DOOLITTLE, *Cashier.*"

Then follows the protest and notice of protest. The check has never been paid.

The evidence shows that at the time the check was given it was delivered to Mr. Tolerton, the attorney for the claimant, and a receipt was given by him to Mr. Crawford to the effect that if the check was paid by the bank when due and presented it should be in full payment of the balance due from the defendant railway company.

It is claimed by the respondents that the execution of the guarantees attached to the contracts and the acceptance of the
546 check under these circumstances was a waiver of any equitable lien the claimant might have against the railway property or the fund in court under their contract.

The intervenor calls the master's attention to the following items of evidence which appear in the main case: First, a letter written by Mr. Tolerton, the attorney for the intervenor, as follows:

TOLEDO, OHIO, *Dec. 5th*, 1884.

H. H. Porter, Esq., Chicago, Ill.

DEAR SIR: I am counsel for the Smith Bridge Co. in the matter of their claim against the Chicago and Great Southern R'y Co. I am advised that you and others have succeeded to the interests of Drexel, Morgan and Co. in the mortgage bonds of the road.

The contract under which the bridges were built (a copy of which I enclose) provides that the title to the bridges and the bridge
547 material shall remain in the bridge company until they are paid for.

My purpose is to file my bill in the U. S. court at Indianapolis, asking for the enforcement of this contract.

This bill has been prepared for some time, but I have been prevailed upon to delay proceedings on account of the promises that the bridge Co. should have their money in a few days. I have recently had a similar contract before the Ohio courts for construction in the case of the receivership of the Cincinnati and Portsmouth R'y Co. In that case the court decreed that the bridge Co. were entitled to the bridges, and gave the receiver authority to purchase them and pay therefor by issuing preferred receiver's certificates. Now, the bridge Co., in order to avoid litigation, is
548 willing to do the same thing in this case. If this syndicate now holding the bonds will satisfy this claim the bridge Co. will transfer to you all their rights or they will sell the bridges to the receiver and accept preferred certificates in payment.

Please advise me by an early reply.

Yours, etc.,

E. W. TOLERTON.

P. S.—I will come to Chicago at any time you may appoint to meet with you realative to this matter.

Also a letter in response to that, written by H. H. Porter, the purchaser and plaintiff:

DEC. 9TH, 1884.

E. W. Tolerton, Esq., 43 Produce Exchange, Toledo, Ohio.

DEAR SIR: Your favor of Dec. 5th received. Within a few days I hope to have made such progress in Chicago and Great Southern matters as will enable me to look into the position of the Smith
549 Bridge Co. I have never seen the papers or known much about the question until your letter.

I will try and fix a date soon when you and myself can meet in Chicago and examine it. In the meantime I presume there is no need for any action for your protection, as the road is in the hands of a receiver and I could take no step to weaken your position if I would, and I certainly would not if I could.

Yours truly,
(Signed) H. H. PORTER.

Also to portions of what is known as the syndicate agreement, bearing date December 26th, 1884, which are as follows:

The syndicate hereby agrees—

Section 3. To pay to the party of the first part for the said bonds and railway stock and coal-company stock hereinbefore mentioned the sum of five hundred thousand dollars ($500,000), to be
550 paid and applied as follows, to wit:

First. The satisfaction and cancellation of the notes of the said party of the first part for three hundred and fifty thousand dollars ($350,000) and interest payable to Drexel, Morgan and Co. and being for money advanced said party of the first part by said firm under contract of January 5th, 1883, by which all the said recited first-mortgage bonds and stock were held as collateral, and which said indebtedness of the party of the first part has been transferred to and now belongs to — party of the second part.

Second. To pay and clear off any and all claims against said Chicago and Great Southern Railway Company which may be decided by the court to be liens upon the said line of railway para-
551 mount to the lien of the bonds and coupons secured by the trust deed to said John C. New dated November 1st, 1881, or which the court may decide shall be equitably payable out of the proceeds of the sale of the said line of railway prior to any payment of the said bonds or coupons, including therein any and all claims for right of way and depot grounds, engine-house, and station buildings, water-tanks, and shops between Fair Oaks and Yeddo, both inclusive, bridges and other structures heretofore built and put in place on said railway and essential to the operation thereof, but the title to which is not in said railway company and which the court may decide must be paid for in preference to said bonds, and also any and all indebtedness incurred by the receiver in possession of said property prior to January 15th, 1885, and not paid out of moneys earned by the operation of said road prior to
552 January 15th, 1885. It is claimed for the intervenor that the facts shown by this evidence entitle it to a lien upon the

fund in court irrespective of any force that may be given to the guarantees that are relied upon by the respondents to this petition.

The master submits to the court without passing upon the question whether under these circumstances the claimant has waived or lost its right to insist upon a lien prior to the lien of the bonds and coupons secured by the mortgage and deed of trust, and also the question as to whether the claim made by the intervenor herein last above mentioned, based upon the evidence in the main case, furnishes an independent and separate right of lien to the intervenor aside from the rights granted to it by the decree heretofore entered in this case.

Respectfully submitted,

WILLIAM P. FISHBACK, *Master.*

553 And now, at the same time, on said 8th day of October, 1886, comes Henry H. Porter, by counsel, and files his exceptions to the report of the master on the intervening petition of Volney Q. Irwin *et al.* in the words following, to wit:

554 Comes now Henry H. Porter, the complainant herein, and files his exceptions to the report of William P. Fishback, master in chancery, filed herein on October 8, 1886, so far as said report relates to and allows the claim of Volney Q. Irwin; and, for ground of exception to such claim, and to any allowance thereof out of the proceeds of sale now in the registry of the court, the said exceptant says:

1. That the evidence shows the claim of said Irwin was for work and labor done by the said Irwin under a written contract for the original construction of a part of the original Chicago and Great Southern railway north of Attica, and that as against the lien and priority of the mortgage executed to John C. New trustee, and the bonds issued thereunder and held by complainant, the said Volney Q. Irwin has no equitable lien or claim whatever upon the said railway, or the proceeds of sale thereof, for work done in the original construction thereof.

2. For that the evidence shows that the debt and claim 555 held by said Volney Q. Irwin was not a debt of the Chicago and Block Coal Railroad Company, or any lien whatever upon the property of the latter, and, therefore, has no equity to be paid out of the proceeds of the sale of that part of the railway south of Attica, and the master should have so reported.

3. For that the record shows that the entire net proceeds of the sale of the railway does not amount to a sum equal to the principal and interest of the debt for which the bonds issued under the mortgage to John C. New, trustee, were pledged in January, 1883, to Drexel, Morgan & Co., and that the complainant, as surety upon said debt to Drexel, Morgan & Co., having paid the same in full, is in equity subrogated to all the rights, liens, and priorities of said Drexel, Morgan & Co. to the extent of the debt which said surety actually paid, together with interest thereon and expenses, for which reason the master should have reported that the complainant, as

such bondholder, was in equity entitled to the entire net proceeds of the sale, which are now in court, in preference to the claim of 556 said Volney Q. Irwin.

4. For that the evidence shows that the said Volney Q. Irwin took out a mechanics' lien under the laws of Indiana on that part of the railroad so constructed by him; that afterwards, in a court of competent jurisdiction, and long prior to the institution of this action for foreclosure, the said Irwin merged his original cause of action, claim, and demand against said railway company into a decree foreclosing his statutory lien on that of the railroad in Warren county; that thereafter, and long prior to the institution of this action, the said Irwin caused the part of said railway property specified in his decree of foreclosure to be sold, and purchased the same in his own name and behalf, and that thereafter, in due conformity with the laws and statutes of Indiana, the said complainant tendered and paid unto the proper officer the full amount of money to effect a redemption of the said property so sold from the claim and lien of said Irwin, and that thereupon the proper officer executed 557 to John C. New, as trustee, for the complainant, a certificate of redemption. Wherefore the master should have found and reported that the said Irwin was not, upon the facts aforesaid, entitled to any lien, claim, or priority against any part of said railway property, or the proceeds of sale thereof, and that the said complainant, as such bondholder, by the redemption aforesaid was entitled to be paid the entire net proceeds of sale now in the registry of said court, in preference to any payment, claim, or demand in behalf of said Irwin.

Wherefore the complainant, as such bondholder, prays that the court will set aside said master's report and allowance and hold the same for naught, and order that the entire net proceeds of sale shall be paid over to the complainant as such bondholder.

McDONALD, BUTLER & MASON,
R. B. F. PEIRCE,
Sol'rs for Exceptant.

And afterwards, to wit, at the May term of said court, on the 9th day of October, 1886, before the Honorable Walter Q. Gresham and the Honorable William A. Woods, judges as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

558 Come now, on this 9th day of October, 1886, the said parties, by their respective counsel, to wit:

John Hack *et al.*, by their solicitor, William A Starin; Henry H. Porter, by McDonald, Butler & Mason, Robert T. Lincoln, and Robert B. F. Peirce, his solicitors; The Chicago & Great Southern Railway Company, by its solicitor, Henry A. Gardner.

And now come also the several intervenors, to wit:

The Smith Bridge Company, by E. W. Tollerton, John S. Cooper, and Harris & Calkins, its solicitors; The Cleveland Rolling Mill Company, by John S. Cooper, Harris & Calkins, and W. Z. Wiley, its solicitors; The Pittsburgh Bessemer Steel Company, by Baker, Hord & Hendricks, its solicitors; Crerar, Adams & Co., by Lyman and Jackson, their solicitors; Volney Q. Irwin, by Peter S. Kennedy and Harris & Calkins, his solicitors.

And upon consideration of the several exceptions filed to the reports of the master, William P. Fishback, on the claims of
559 The Cleveland Rolling Mill Company, The Smith Bridge
Company, Crerar, Adams & Company, The Pittsburgh Bessemer Steel Company, and Volney Q. Irwin, the court, being sufficiently advised, overruled the said several exceptions and each and every of them, except as to the allowance of interest as to the said five claimants, intervening petitioners, and defendants hereinbefore named. And the court upon said reports and all the evidence in this cause finds—

First. That the said five several defendants, claimants, and intervening petitioners hereinbefore named have each done work or furnished materials which have been used in the construction and betterment of the railway of said Chicago and Great Southern Railway Company prior to the appointment of the receiver therefor, which respective claims for such labor and material are valid claims against said railway company to the amounts hereinafter named, and which said amounts are adjudged and decreed to be valid claims under and in pursuance of the sixth paragraph of the decree heretofore, on the 16th day of February, 1886, entered in this cause prior and superior and paramount to the lien of the mort-
560 gages or deeds of trust in said decree mentioned and the
bonds secured thereby.

Second. And the court further finds that there is now in the registry of this court to the credit of this cause the sum of $325,194.27, derived from the sale of said property, and remaining after the payment of all receiver's certificates and certain of the indebtedness incurred by the court since it assumed the control and management of said railroad, and which sum is largely in excess of the total amount of claims filed or proven under the terms of said decree entered on the 16th day of February, 1886, including all unpaid costs and indebtedness incurred by the court since it took possession of said railway property.

Third. And the court further finds that there is due to the Smith Bridge Company the sum of $20,900.24, with interest to be added from the 27th day of Oct., 1884, at the rate of six per cent. per annum.

That there is due to the Cleveland Rolling Mill Company the sum of $29,643.97, with interest to be added from the 27th day of Oct., 1884, at the rate of six per cent. per annum.

That there is due to Crerar, Adams & Co. the sum of $7,809.94, with interest to be added from the 27th day of Oct., 1884,
561 at the rate of six per cent. per annum.

That there is due to the Pittsburgh Bessemer Steel Company the sum of $12,944.20, with interest to be added from the 27th day of Oct. at the rate of six per cent. per annum.

That there is due Volney Q. Irwin the sum of $11,450.30, with interest to be added from the 27th day of Oct., 1884, at the rate of six per cent. per annum.

Which several sums of money are due to said above-named parties, respectively, for and on account of labor or material used in the construction and betterment of said railway, as provided and set forth in the sixth paragraph of said decree, entered in said cause on the 16th day of February, 1886.

It is therefore finally ordered, adjudged, and decree by the court that the clerk of this court shall pay out of the said fund in the registry of the court to the credit of this cause the said several sums of money with interest to be computed thereon to the said parties, respectively, or their solicitors of record, viz:

To the Smith Bridge Company the sum of $23,345.54.
To the Cleveland Rolling Mill Co. the sum of $33,112.32.
To Crevar, Adams & Company the sum of $8,723.71.
To the Pittsburgh Bessemer Steel Company the sum of $14,458.65
To Volney Q. Irwin the sum of $12,789.98.

Said several payments shall be made with interest at the
562 rate of six per centum per annum from the date of the entry
of this decree in full payment and discharge of said respective
claims against said railway property and franchises.

Whereupon the said Henry H. Porter prayed a separate appeal to the Supreme Court of the United States from each of the decrees and orders of payment hereinbefore recited in favor of the said Pittsburgh Bessemer Steel Company, Cleveland Rolling Mill Company, Smith Bridge Company, Crerar, Adams & Co., and Volney Q. Irwin, and the said several appeals so prayed by said Porter are hereby allowed upon his filing a separate bond in each of said allowed appeals in the penal sum of one thousand dollars, with surety to be approved by the court, and in such approval the same shall operate as a supersedeas.

And it is further in open court agreed and stipulated between the said Henry H. Porter, on the one side, and the said Pittsburgh Bessemer Steel Company, the Smith Bridge Company, the Cleveland Rolling Mill Company, Crerar, Adams & Co., and Volney Q. Irwin, on the other, that the several appeals hereinbefore allowed shall be submitted at the next term of the Supreme Court of the United States, which commences on October 11, 1886, under the 20th rule of said Supreme Court.

563 And as to all the other claims reported upon by the master and the exceptions to all such claims the court reserves all such matters for future consideration.

564 And afterwards, to wit, at the May term of said court, on the 13th day of October, 1886, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, Henry H. Porter, by counsel, and files his appeal bond in the matter of the petition of the Pittsburgh Bessemer Steel Company (Limited) herein in the sum of one thousand dollars, with Samuel M. Nickerson as surety thereon, and approved by the court.

And at the same time said complainant also files his appeal bond in the matter of the petition of the Smith Bridge Company herein in the sum of one thousand dollars, with Samuel M. Nickerson as surety thereon, and approved by the court.

And at the same time said complainant also files his appeal bond in the matter of the petition of the Cleveland Rolling Mill Company herein in the sum of one thousand dollars, with Samuel M. Nickerson as surety thereon, and approved by the court.

And at the same time said complainant also files his appeal bond in the matter of the petition of Crerar, Adams & Co. herein in the sum of one thousand dollars, with Samuel M. Nickerson as surety thereon, and approved by the court.

And at the same time said complainant also files his appeal bond in the matter of the petition of Volney Q. Irwin *et al.* herein in the sum of one thousand dollars, with Samuel M. Nickerson as surety thereon, and approved by the court.

And said bonds are in the words following, to wit:

565 In the Matter of the Petition of the PITTSBURGH BESSEMER STEEL COMPANY (Limited).

Know all men by these presents that we, Henry H. Porter and Samuel M. Nickerson, are held and firmly bound unto the Pittsburgh Bessemer Steel Company (Limited) in the sum of one thousand dollars, to be paid to said Pittsburgh Bessemer Steel Company (Limited); to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, *jointly* by these presents.

Sealed with our seals and dated this 12th day of October, 1886.

Whereas the above-named Henry H. Porter hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana in favor of the said Pittsburgh Bessemer Steel Company (Limited):

Now, therefore, the condition of this obligation is, that if the above-named Henry H. Porter shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea, then this obligation to be void; otherwise in full force.

HENRY H. PORTER. [SEAL.]
SAM'L M. NICKERSON. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Taken and approved by me this 12th day of October, 1886.

W. Q. GRESHAM,
Circuit Judge.

566 In the Matter of the Petition of the SMITH BRIDGE COMPANY.

Know all men by these presents that we, Henry H. Porter and Samuel M. Nickerson, are held and firmly bound unto the Smith Bridge Company in the sum of one thousand dollars, to be paid to said Smith Bridge Company; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, *jointly* by these presents.

Sealed with our seals and dated this 12th day of October, 1886.

Whereas the above-named Henry H. Porter hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana in favor of the said Smith Bridge Company:

Now, therefore, the condition of this obligation is, that if the above-named Henry H. Porter shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea, then this obligation to be void; otherwise in full force.

HENRY H. PORTER. [SEAL.]
SAM'L M. NICKERSON. [SEAL.]

Sealed and delivered in presence of—

——.——.

Taken and approved by me this 12th day of October, 1886.

W. Q. GRESHAM,
Circuit Judge.

567 In the Matter of the Petition of the CLEVELAND ROLLING MILL COMPANY.

Know all men by these presents that we, Henry H. Porter and Samuel M. Nickerson, are held and firmly bound unto the Cleveland Rolling Mill Company in the sum of one thousand dollars, to be paid to said Cleveland Rolling Mill Company; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, *jointly* by these presents.

Sealed with our seals and dated this 12th day of October, 1886.

Whereas the above-named Henry H. Porter hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana in favor of the said Cleveland Rolling Mill Company:

Now, therefore, the condition of this obligation is, that if the above-named Henry H. Porter shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him if he shall make good his plea, then this obligation to be void; otherwise to be in full force.

HENRY H. PORTER. [SEAL.]
SAM'L M. NICKERSON. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Taken and approved by me this 12th day of October, 1886.

W. Q. GRESHAM,
Circuit Judge.

568 In the Matter of the Petition of CRERAR, ADAMS AND COMPANY.

Know all men by these presents that we, Henry H. Porter and Samuel M. Nickerson, are held and firmly bound unto Crerar, Adams and Company in the sum of one thousand dollars, to be paid to said Crerar, Adams and Company; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, *jointly* by these presents.

Sealed with our seals and dated this 12th day of October, 1886.

Whereas the above-named Henry H. Porter hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana in favor of the said Crerar, Adams and Company:

Now, therefore, the condition of this obligation is, that if the above-named Henry H. Porter shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea, then this obligation to be void; otherwise in full force.

569 HENRY H. PORTER. [SEAL.]
SAM'L M. NICKERSON. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Taken and approved by me this 12th day of October, 1886.

W. Q. GRESHAM,
Circuit Judge.

In the Matter of the Petition of VOLNEY Q. IRWIN.

Know all men by these presents that we, Henry H. Porter and Samuel M. Nickerson, are held and firmly bound unto Volney Q. Irwin in the sum of one thousand dollars, to be paid to said Volney Q. Irwin; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, *jointly* by these presents.

Sealed with our seals and dated this 12th day of October, 1886.

Whereas the above-named Henry H. Porter hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana in favor of the said Volney Q. Irwin:

569½ Now, therefore, the condition of this obligation is, that if the above-named Henry H. Porter shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or

566 In the Matter of the Petition of the SMITH BRIDGE COMPANY.

Know all men by these presents that we, Henry H. Porter and Samuel M. Nickerson, are held and firmly bound unto the Smith Bridge Company in the sum of one thousand dollars, to be paid to said Smith Bridge Company; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, *jointly* by these presents.

Sealed with our seals and dated this 12th day of October, 1886.

Whereas the above-named Henry H. Porter hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana in favor of the said Smith Bridge Company:

Now, therefore, the condition of this obligation is, that if the above-named Henry H. Porter shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea, then this obligation to be void; otherwise in full force.

HENRY H. PORTER. [SEAL.]
SAM'L M. NICKERSON. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Taken and approved by me this 12th day of October, 1886.

W. Q. GRESHAM,
Circuit Judge.

567 In the Matter of the Petition of the CLEVELAND ROLLING MILL COMPANY.

Know all men by these presents that we, Henry H. Porter and Samuel M. Nickerson, are held and firmly bound unto the Cleveland Rolling Mill Company in the sum of one thousand dollars, to be paid to said Cleveland Rolling Mill Company; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, *jointly* by these presents.

Sealed with our seals and dated this 12th day of October, 1886.

Whereas the above-named Henry H. Porter hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana in favor of the said Cleveland Rolling Mill Company:

Now, therefore, the condition of this obligation is, that if the above-named Henry H. Porter shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him if he shall make good his plea, then this obligation to be void; otherwise to be in full force.

HENRY H. PORTER. [SEAL.]
SAM'L M. NICKERSON. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Taken and approved by me this 12th day of October, 1886.

W. Q. GRESHAM,
Circuit Judge.

568 In the Matter of the Petition of CRERAR, ADAMS AND COMPANY.

Know all men by these presents that we, Henry H. Porter and Samuel M. Nickerson, are held and firmly bound unto Crerar, Adams and Company in the sum of one thousand dollars, to be paid to said Crerar, Adams and Company; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, *jointly* by these presents.

Sealed with our seals and dated this 12th day of October, 1886.

Whereas the above-named Henry H. Porter hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana in favor of the said Crerar, Adams and Company:

Now, therefore, the condition of this obligation is, that if the above-named Henry H. Porter shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea, then this obligation to be void; otherwise in full force.

569 HENRY H. PORTER. [SEAL.]
SAM'L M. NICKERSON. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Taken and approved by me this 12th day of October, 1886.

W. Q. GRESHAM,
Circuit Judge.

In the Matter of the Petition of VOLNEY Q. IRWIN.

Know all men by these presents that we, Henry H. Porter and Samuel M. Nickerson, are held and firmly bound unto Volney Q. Irwin in the sum of one thousand dollars, to be paid to said Volney Q. Irwin; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, *jointly* by these presents.

Sealed with our seals and dated this 12th day of October, 1886.

Whereas the above-named Henry H. Porter hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana in favor of the said Volney Q. Irwin:

569½ Now, therefore, the condition of this obligation is, that if the above-named Henry H. Porter shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea, then this obligation to be void; otherwise in full force.

HENRY H. PORTER. [SEAL.]
SAM'L M. NICKERSON. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Taken and approved by me this 12th day of October, 1886.

W. Q. GRESHAM,
Circuit Judge.

569a *Stipulation.*

PORTER *v.* CHICAGO & G. S. R'Y CO.

It is hereby stipulated by and between the respective parties to these appeals that the $1,200,000 of mortgage bonds, which the appellant claims were issued under the mortgage of the Chicago & Great Southern Railway Company and involved in this litigation, when produced in evidence in this cause by said Porter as complainant, had attached to them all of their respective interest coupons representing all the installments of interest on said bonds, and none of the coupons having been detached from any or either of said bonds.

It is further stipulated that in the case of John Hack *et al.* against The Chicago & Great Southern Railway Company *et al.*, commenced in the circuit court of Jasper county, Indiana, and thence removed by change of venue to the circuit court of Newton county, Indiana, and thence removed to the United States circuit court for the district of Indiana, and consolidated with this cause, Henry Crawford, who was made a party to the said original complaint of said John Hack *et al.*, entered his appearance therein and consented to the appointment of the receiver made by the said State court of Indiana; and that afterwards and on the 5th day of March, 1885, while said suit was pending in the said circuit court of Newton county, Indiana, the said Henry Crawford filed his answer in said suit, wherein and whereby he disclaimed any and all interest in the result of said suit, and that the said court, on the day and year last aforesaid, ordered, adjudged, and decreed that said Crawford recover from the plaintiffs his costs in the said suit, and that he, said Crawford, had no interest whatever in any controversy pertaining to said action.

569b It is further stipulated that in the suit of John Hack and others against the said railway company, when the same was pending in the said circuit court of Newton county, Indiana, the said court, on the 26th day of February, 1885, removed Phillip B. Shumway and appointed in his stead one William Foster as receiver of said railway company in said cause, in which last-mentioned order it was and is decreed by the court, among other things, as follows:

"And the court, as a condition of the appointment of the receiver, reserves the right to make any further order respecting the priority and payment of labor and supply claims accruing prior to the receivership herein as may hereafter seem and appear to the court to be equitable and just.

McDONALD, BUTLER & MASON,
R. B. F. PIERCE
Solicitors for Henry H. Porter.

HARRIS & CALKINS,
Solicitors for Claimant, Bessemer Steel Co."

570 *Hearing on the Order of Reference Made in this Cause Jan.* 8, 1886.

HENRY H. PORTER
vs.
THE CHICAGO AND GREAT SOUTHERN RAILWAY COMPANY. } No. —.

JAN. 13, 1886—2.00 p. m.

Present: George C. Kimball, the receiver, in person, and by R. B. F. Pierce, counsel, before W. P. Fishback, master.

The receiver produces a balance-sheet, which contains a statement of the receipts and disbursements from April 18, 1885, to September 1, 1886, which shows the total operating expenses during that period have been $55,284.23, and the earnings during the same period have been $34,049.59, showing a deficit during that period of 21,238.14. Said statement may be found with *the* Receiver Kimball's report for November, 1885, filed in this cause Dec. 30, 1885.

Questions by the MASTER:

1. Please state the amount and character of the rolling-stock now in your possession as receiver, giving the locomotives separately and each class of cars separately; and, if they are held by 571 lease, state who is the lessor; and, if they are held by purchase, state who sold them, and how much has been paid and what is unpaid.

A. When I took charge of the property there were eight old locomotives there. I do not know who owned them. Foster, the former receiver, undertook to levy on two of them, and I forbade him without getting an order from the court, and I have held those old engines there in my possession—the whole eight. Only two of them were serviceable at the time I took the road.

Q. 2. State whose make those engines were and what class of engines, for the purpose of identifying them.

A. No. 1 was manufactured by the Cook Locomotive Works of Jersey City; cylinder, 16 by 22. It was out of service—disabled at the time I took possession. No. 2, same make; cylinder, 14 by 22; out of service and disabled. The cylinder was knocked clear off of it. It would not pay to have it repaired. No. 5, Mason engine; cylinder, 12 by 18; in the same condition. No. 6, Rogers' engine; cylinder, 14 by 22; unfit for service. No. 7, Rogers'; cylinder, 14 by 22; unfit for service. No. 8, Rogers; cylinder, 16 by 22; out 572 of service, disabled. No. 30, Swinborn manufactory; 15 by 22 cylinder; out of service, disabled.

No. 1 and 2, Pittsburgh Locomotive Works; cylinder of each 17 by 24; new, in good condition.

The numbers one and two, first named above, were so much out of repair that it would not pay to refit them for service, and they were abandoned by me.

The last two engines, numbers one and two, were manufactured by the Pittsburgh Locomotive Works, and, as I said before, were new when I received them and in good order. I found them there; they had been leased by the former receiver.

Q. 3. Have you seen that lease or do you know anything about it?

A. Oh, yes; we have been paying rentals on it.

Q. 4. At what rent?

A. Five dollars a day each; the receiver to keep up all repairs and to return them in good condition, aside from the natural wear and tear.

Q. 5. Are those the only locomotives that were held under lease when you came on, that you know of?

A. I really do not know; I found them there.

573 Q. 6. Are those the only two you know of being held by the receiver under lease at the time you came on?

A. Yes, sir.

Q. 7. As to the ownership of the other locomotives, or whether they were held by lease or not, you are without information—that is, as to the other eight?

A. Yes, sir.

Q. 8. If, during your receivership, you have hired or purchased any other locomotives, you may state what and on what terms.

A. I purchased two locomotives of the Pittsburgh Locomotive Company, Nos. 3 and 4; cylinder, 17 by 24.

Q. 9. At what price?

A. $5,900 for No. 3, $6,000 for No. 4. No. 4 had an extension front, and I paid $100 more for it.

Q. 10. How much of the purchase-money have you paid, and out of what money?

A. I have paid it all. I paid for those engines out of the proceeds of the receiver's certificates, series No. 3, issued by order of this court made August 15, 1885, providing for issuing $80,000 receiver's certificates for the purchase of engines, etc.

Q. 11. You commenced numbering the new locomotives one, two, three, and four?

574 A. Yes, sir; two that were there and two that were bought new afterwards.

Q. 12. Have you purchased any other engines?

A. No other rolling-stock.

Q. 13. Of what does the motive power consist that you have in use to-day?

A. There are only two locomotives I purchased that are in operation to-day. The two engines that had been leased at $5.00 a day were returned by me to the owners—one Dec. 1, the other Dec. 5, 1885.

Q. 14. State whether the rentals have all been paid for those two engines.

A. No; it has not been paid.

Q. 15. How much is due?

A. The balance due is $1,245, due to the owners for the rental of these two locomotives that have been returned.

Q. 16. Your present available motive power consists then of two new engines you bought and paid for under the order of the court?

A. Yes, sir; the two old engines which were fit for service when I went on have become disabled since, and their value is not sufficient to justify any other expenditures for repairs, and I have abandoned them virtually. There is one of them can be used for
light work, switching around the yards or something of that
575 kind. I am using it for that purpose when needed—using it
for switching material down to the bridge from the yard. It will not pay to rebuild it.

Q. 17. What in the way of equipment, coaches, baggage, mail, and express cars did you find when you went on?

A. I found two passenger coaches manufactured by the Ohio Falls Car Company.

Q. 18. State how they were held, whether by lease or purchase, if you know.

A. I do not know anything more than what I hear from other people. Some say they leased. I have been informed that they had been sold to the company. I saw a copy of the contract with William A. Adams and others, which I have with me here, saying they had been sold or leased to the Chicago and Great Southern Railway Company; that is my understanding of it. I will produce a copy of it to be attached to my evidence; and I now exhibit a copy of that contract, dated June 28, 1883, between the Bristol and South Wales Railway Wagon Company, Limited, and the Union Rolling Stock Company, Limited, and William A. Adams and the Chicago and Great Southern Railway Company, and the Ohio Falls Car Company, for
the lease or conditional sale of four hundred coal cars, 100 *in*
576 box cars, twenty-five stock cars, 2 passenger cars, 2 baggage,
mail, and express cars, and 4 caboose cars. The two passenger cars I have mentioned are the ones named in this lease or contract.

Q. 19. How much of the other rolling-stock described in that contract did you find on the road at the time you became receiver, and how much of said stock in addition to what you then found have you become possessed of since your appointment as receiver?

A. There were on the road at the time of my appointment 268 coal cars, 21 box cars, 17 stock cars, 2 coaches which I have already mentioned, 2 baggage, mail, and express, and 4 caboose cars belonging, as I suppose, to the above-mentioned car trust company. On Dec. 1, 1885, our books show that there were in our possession 298 coal cars, 18 stock cars, 50 box cars, 2 coaches, 2 baggage, mail, and express, and 4 cabooses.

Q. 20. If you know from your own knowledge, or from books in your possession, what, if anything, has been paid in the way of rental or payments on the rolling-stock covered by this contract, please state.

A. I have paid nothing on the contract.

577 Q. 21. What do the books show, if anything, as to how much had been paid before your receivership?

A. The books of the company do not show that any portion of the purchase-money has ever been paid for the rolling-stock covered by that contract, nor that any rentals have been paid up to the time I took the receivership, and no rentals or payments on account of the purchase of said cars have been made by me since my appointment.

Q. 22. When you went on did you take the numbers of the different kinds of cars and equipment that were on the road at the beginning of your receivership, so that you could distinguish them from other cars covered by this contract that were not then in your possession?

A. Yes, sir; I took the numbers and the sidings on which they were located; I went over the road myself and took an account of them.

Q. 23. Do you know where any of the cars covered by this contract, other than the ones that you found there, are or have been during the receivership, giving numbers?

A. I cannot tell about the numbers.

Q. 24. State what information you have as to where the cars, other than those you found there, are or have been.

A. I noticed some of the cars covered by this contract running on the Louisville, New Albany and Chicago railroad. 578

Q. 25. Were those cars marked leased?

A. No; I will not say that, but there was a board on the cars stating that the mileage of these cars was to be reported to the Louisville, New Albany and Chicago Railroad Company.

Q. 26. Did you receive anything for the mileage of these cars during your receivership?

A. I cannot say as to that, because they had other cars in daily use, so that I cannot tell whether we received anything for these particular cars or not, and in our reports for mileage they do not designate by numbers.

Q. 27. Does not your car account show for what cars the mileage was paid? Are there any papers or records in your possession as receiver of the company, or of your predecessors, showing the terms on which these cars are held by the Louisville, New Albany and Chicago railroad?

A. There are no papers whatever, and I have failed to get information on that question from Mr. Shumway, the former receiver. He claims to know nothing of it.

Q. 28. Have you any information on the subject at all?

A. None whatever.

579 Q. 29. Have you made any effort to ascertain from the Louisville, New Albany and Chicago road by what right they hold and use the cars?

A. No; I have not, for the reason that Mr. Shumway said to me once after my appointment that he had had some conversation with Mr. Adams, the agent of this company, relative to returning to the lessors named in the contract which I have mentioned all the cars covered by that contract or leasing them to others; but nothing definite had been decided as to what should be done.

Q. 30. Have you no means of knowing what has become of the equipment covered by that contract besides those you have named as having come to your possession and those in possession of the Louisville, New Albany and Chicago railroad?

A. I have no means of knowing, unless the court should require me to look them up. I could probably find out who made the arrangement with them and what the arrangement was. Mr. Shumway told me that he had leased 50 of the coal cars covered by the contract named to the Star Coal Company, to be used on the Chicago and Alton railway, and that that arrangement had been made with the consent of Mr. Adams. But he says he does not think they were all sent there. He said his impression was there were 42 of
580 the 50, but that his reports filed in the court would show how many.

Q. 31. What do you know, if anything, of the claim by the owners or lessors of those cars for the rental for the equipment covered by the contract?

A. I know nothing, except what the contract says.

Q. 32. Do you know whether the owners of that equipment have been receiving rental for their use from anybody?

A. I do not know.

Q. How much of the equipment covered by that contract is there that has never been in your possession?

A. I had on hand as receiver Dec. 1, 1885, 298 coal-cars, 50 box cars.

Q. 33. Are any of those coal cars elsewhere that you know of? How many did the Star Coal Company have?

A. Mr. Shumway said he did not know; he thought his report would show that there were 42 in use on the Chicago and Alton.

Q. 34. Then the fact would be that you have 298, and you understood that 42 went to the Star Coal Company?

A. Yes, sir; Mr. Shumway said he thought that was the number; that his report in court would show.

Q. 35. And the other 60 of the 400 named in the contract, do you know where they are?

581 A. No, sir.

Q. 36. The next item is 100 box cars. How many have you?

A. I had 50 on hand Dec 1.

Q. 37. How many did the Louisville, New Albany and Chicago railroad have?

A. I only know what others say. I learn they have 50 cars.

Q. 38. The Louisville, New Albany and Chicago road have them in use as you have stated?

A. Yes, sir; I made no inquiry of the officers of the Louisville, New Albany and Chicago road as to the terms upon which they claimed to hold the 50 box cars which they are said to be using. I asked my predecessors in the receivership about it, and they did not know anything about it.

Q. 39. Of the stock cars how many have you?

A. I have 18 now. I had 17 when I took the property.

Q. 40. You have 18 of the 25 stock cars; where are the other 7?

A. I have no knowledge or information of them, and there is nothing in the books of the company that came to my possession that would indicate where they are.

Q. 41. Four cabooses and two baggage, mail, and express cars you have?

A. Yes, sir.

Q. 42. Did you- predecessors or the company before there was a receiver, from anything you can see on the books, keep a car account? 582

A. I do not know how it was before their time; they undertook to keep a car account after the receiver was appointed, but, as my clerk says, the accounts were very badly behind at the time. They were so far behind I put an extra man on trying to get some account of it, and I told my clerk in connection with his work to keep in mind that car account and see if there was anything to show us about it.

Q. 43. Do you know anything about the terms of the rental of these cars, or for the sale of them outside of the contract?

A. No, sir.

Q. 44. Have you had any negotiations or agreement with the owners or lessors?

A. No, sir; nothing of the sort.

Q. 45. State what other equipment, rolling-stock, or motive power you found on the road, if any, beside the engines you have named and the rolling-stock described in the contract you have spoken of?

A. I found 23 old platform cars, the majority of which were in bad repair, having been used for construction work. They were there at the time of my appointment, in April.

Q. 46. That is, you mean flat cars?

583 A. Yes, sir; since then there were four more brought in, making 27 on the first of December. Some of these cars were marked Henry Crawford; others had no mark whatever, but they were all the same pattern of cars throughout, which led me to think that they belonged to the property.

Q. 47. You know of no claim of ownership on the part of any person for those cars adverse to the claim of the company?

A. No, sir; I was told by the attorney for the Muskegon Car and Engine Company that they had sold quite a number of cars for which they had received no compensation, and asked me what they could do about it, and I told him I had not the least idea.

Q. 48. Who were the makers of these cars?

A. The Muskegon Car Company.

Q. 49. Do you know whether they have been paid for them or not?

A. No, sir; they have a claim of between $15,000 and $20,000, I believe?

Q. 50. Do you know whether they have filed a claim against the company?

A. No; I do not think they have.

Q. 51. Have they told you that they have a claim of that kind against the company?

A. The attorney said that they manufactured the cars for
584 commission men, and the cars were marked according to his
directions.

Q. 53. Do you know when they came on the road?

A. No, sir.

Q. 54. There is nothing on the books to indicate when they went into service?

A. No, sir.

Q. 55. Do the books of the company show wrecks or collisions that will account for the loss of this stock which you are unable to trace?

A. No, sir.

Q. 56. Is that all the equipment and rolling-stock that you know of that was on the road when you came there or has come there since?

A. Yes, sir; and what is there now.

Q. 57. I will now ask you to state the amount expended by you as receiver since your appointment in grading and otherwise improving the railway — that is, what you have done in the way of bettering the property; not simply in keeping it up, as the order states, in grading or otherwise improving the railway.

A. From April 18 to December 1 there has been expended upon what I call construction $41,900.17. We have spent from April 18
to Dec. 1, total amount, $158,235.05, which includes receiver's
585 certificates and everything. I have bettered the property
probably the difference between $55,000 and 158,000. That would be my answer to that question.

Q. 58. In what did these improvements consist?

A. Steel rails that have been put in the place of iron rails that have been taken out and used for making new sidings and lengthening old ones. There were new ties, piles, bridge ties, and bridge timber.

Q. 59. Have you done any ballasting?

A. Yes, sir; we have done a great deal of it; we have ballasted 62 miles.

Q. 60. What material did you use?

A. Gravel ballast.

Q. 61. What construction have you made, if any, in the way of station-houses?

A. I have put up three new water stations complete. As to pumping-engines, I have used a cheap apparatus for pumping and have about finished getting them up now. We bought an old building at Attica, and fixed it up for a machine-shop and put new machinery in it, and we built a new three-stall engine-house. We have also constructed a new turn-table at Attica. There was only one turn-table on the road when I took possession, and that was at

Yeddo, and only one cheap engine-house, which was at Fair
586 Oaks. I have purchased a derrick car or wrecking car, which
I have been using in improving a bridge over the Wabash
river in making repairs, and I have bought a new steam pile-driver
for $4,000.

Q. 62. Did you put in any new truss bridges?

A. I am expending $10,000 on a bridge across the Wabash river and $8,500 for an under-crossing of the Wabash River railroad near Attica, and I have rebuilt 49 bridges and driven 694 piles up to December 1.

Q. 63. Are you indebted for any of this work on construction, or has it been paid for?

A. We are in debt about $30,000 yet for construction work and steel rails, and rent of motive power and a steam-shovel; we owe for it now about $30,000.

Q. 64. To whom?

A. To different individuals. We owe that for construction and supplies; they are all listed.

Q. 65. Does your list of them show the actual or estimated amount?

A. It shows the actual amount, with the bills that have been presented. For the amounts unpaid and owing on account of construction and rebuilding bridges and supplies I furnish a schedule showing the actual amount of the cost according to the bills actually rendered.

587 Q. 66. Have you anything further to add on the subject of
what you have expended on supplies, improvements, etc?

A. The balance to Dec. 1 shows that we have expended since April 18 $158,000, total outlays; of that was charged to operating expenses $55,284.23, and the balance would be $102,950.83—in other words, there has been expended on construction and equipment, over and above operating expenses, $102,950.82, including the amount paid for locomotives and machinery, derrick car, and pile-driver.

Q. 67. You regard, then, that the property has been increased in value to that extent?

A. Yes, sir.

Q. 68. And in doing that you have incurred the indebtedness shown by this schedule?

A. Yes, sir.

Q. 69. It is the only portion of it that remains unpaid?

A. I think that is so. That includes all the bills that were in on the first of January.

Q. 70. Do you know whether there is any considerable amount out?

A. I think $1,000 besides what is there would pay the bills that
might be coming in. We are rebuilding a bridge across the Wabash, and every month expenses are coming in, and I had
588 orders from court to go ahead with that work and also with
the under crossing. Most of it is now completed. A portion
has been paid for and a portion of it is yet owing.

Q. 71. How much money will it take to complete the construction of betterment work you have now in progress?

A. I figure it to-day as not to exceed $5,000.

Q. 72. I will ask you now what amount of receiver's certificates of series No. 1 have been sold, and what you have realized from the sale of them?

A. We have sold $23,000 and realized the face of them; we sold them at par. Of the $30,000 authorized to be issued in series No. 1, I only issued $23,000.

Q. 73. Now state what disposition you have made of that $23,000.

A. It has all been expended to pay the indebtedness of the former receivers and right-of-way matters that have been authorized by the courts of Newton, Jasper, and Benton counties. $23,000 have been sold, and all except $1,522.92 have been expended for the purposes indicated by the order authorizing the issue of those certificates; and my vouchers and reports are on file to show the items for which these payments have been made.

589 Q. 74. What amount of receiver's certificates of series No. 2 have been sold, and what have you realized on the sale of them, and what have you done with the proceeds thereof?

A. There have been $50,000 of the second series sold at par value, and all except $62.52 have been expended as per order of the court and vouchers filed with the court, as shown by my reports. There have been expended of series No. 2 $49,937.48, as shown by the statement of disbursements on account of receiver's certificates filed in my monthly reports. The total issue authorized was $50,000, and all but $62.52 had been expended. The paper marked sheet No. 1 contains a statement of all the items presented to the court in the application which was made for the issuance of receiver's certificates, series No. 2, and the money realized from the sale of these certificates has been applied to the payment of the items named on sheet No. 1.

Q. 75. State whether the items set forth in sheet No. 1, to pay which certificates—series No. 2—*was* issued, have all paid out of the $50,000.

A. Yes, sir; I think, every dollar.

Q 76. For what were the certificates designated as series No. 3 issued?

A. To pay the items set forth in the paper I now exhibit as sheet No. 2.

590 Q. 77. State whether or not the items named in that statement on sheet No. 2 have been paid out of the proceeds of the certificates of series No. 3. If not, what portion of the items, if any of them, are unpaid?

A. So far as they have been presented they have been paid. The work on the Wabash-river bridge is not yet completed. It has all been paid except about $5,000. On my application to the court I had to approximate the sum. For instance, on the bridge across the Wabash river I had to make as careful an estimate as I could, and the same with the under crossing, and for the tools and machinery I got prices from the dealers to know what they would sell for before I purchased.

Q. 78. State by items the receiver's certificates in one item and other debts in addition, the total amount of the debt contracted by you during the receivership.

A. Total amount of receiver's certificates,	$153,000 00
Other debts	35,000
Total	$188,000 00

Of the proceeds of series No. 1 of receiver's certificates $20,000 issued has been applied to the payment of the debts contracted by my predecessors, Shumway and Foster, as the receivers of the road,
the items which appear in my monthly reports filed in this
591 court. Total receipts for earnings on the road during my
receivership to December 1, 1885, is $34,049.59, as appears
by the statement which I first presented to-day and filed with my report for the month of November, 1885, which was filed in this court Dec. 30, 1885.

Statement of Unpaid Bills, etc., to Jan. 11, '86.

Geo. C. Kimball, receiver C. and G. S. r'y.

Engine-house, Attica	$1,550 00
Hand-car wheels	16 00
Personal injuries	5 00
Sundry supplies	4 30
2 stoves	26 00
Oil boxes, etc.	36 84
3 stoves	37 50
Freight drayage	5 14
One pump	36 00
Sundry supplies	180 40
Coal, "Dec."	589 20
2 stoves	12 50
1 head-light	35 00
Iron	87 45
1 box-house	26 00
Lumber	121 77
"	126 91
"	95 50
"	98 80
"	108 24
Lumber	124 41
592 "	119 61
Lanterns	17 25
Lumber	86 00
One crossing, "Big 4"	225 00
" "Frog, etc."	61 50
Timber	690 33
Gas-pipe, etc.	35 94

Packing	12	95
Signal oil	20	25
Jack-screws	9	00
4 sheets steel	3	92
	$4,605	71

EXHIBIT A.

Am't brought forw'd	$4,605	71
Oil boxes and *etc.*	102	62
Claw-bars, etc	12	66
Brooms, etc	25	80
Oil	34	48
Tanks, pumps, etc	376	76
Tallow	22	31
Oil	6	50
Angle bars	919	37
Table, etc.	20	00
Chairs	84	16
Maul handle	25	04
Head-light chimneys	13	44
Bracket lamps	6	00
Fencing	287	50
Lining bars, etc.	108	46
Iron	92	02
1 lot, Goodland	1,200	00
1 lot, Oxford	657	43
593 Gravel pit	305	49
Stationery	16	23
Iron, etc.	119	23
Rent, engine 1	610	00
" " 2	635	00
" steam-shovel	835	00
227$\frac{1528}{2240}$ steel rail	6,716	50
3,200 cedar ties	949	02
Wabash river bridge	206	94
" under crossing	2,805	30
Western fence coy	3,000	00
	$24,605	97
Pay-roll, Dec., 1885	6,253	41
	$30,859	38

Chicago and Great Southern railway. Bills payable by Geo. C. Kimball, receiver.

H. H. Porter, advances on pay-rolls and material	$29,730 00
Pay-roll, July	8,029 69
Pay-roll, August, approximated to the 15th	4,014 84
Vouchers, July	2,278 82
Vouchers, August, approximated to the 15th	2,567 50
Coal bills, July and to August 15th	900 00
Ties and fence-posts	1,020 00
Total	$48,540 85

Ap-roximate cost of tools and machinery needed for the economical working of the property, and cost of real estate paid for by Geo. C. Kimball individually:

594	Steam pile-driver	$4,500 00
	Derrick car	1,850 00
	Two locomotives, cylinders 17 x 24	112,300 00
	Screw-cutting lathe, 12 ft. bed, 24 in. swing	586 00
	One iron planer	775 00
	One drill press	271 25
	One bolt cutter	310 25
	Real estate.	
	Lot No. 105, city of Attica, for stock-yards	615 75
	Lot No. 104, " " for turn-table	603 00
	Lot No. 82, fronting on Union St.	400 00
	Lot Nos. 62 and 79	1,450 00
	Repairs.	
	Rep'rs bridge over Wabash river at Attica	10,000 00
	Under crossing with Wabash, St. L. and Pac. r'y	8,500 00
	1,000 steel rail-, bolts, splices	35,000 00
	Total	$771,161 25

Evidence of J. M. Rynearson Taken Before the Master under the Order of the Court of Date the 8th Day of January, 1886.

In the Circuit Court of the United States for the District of Indiana.

HENRY H. PORTER

vs.

THE CHICAGO AND GREAT SOUTHERN RAILWAY COMPANY *et al.*

595 Present: A. C. Harris, on behalf of claimants and stockholders, Hon. R. B. F. Peirce appearing for the receiver.

The said J. W. RYNEARSON, being produced on behalf of the claimants and stockholders, who, being first duly sworn by the master to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Examination-in-chief.

Questions by A. C. **Harris**, Esq.:

Q. 1. State your name.

A. J. M. Rynearson.

Q. 2. What is your business?

A. A postal clerk.

3 Q. On what railroad?

A. Chicago and Great Southern.

4 Q. How long have you been running on that road?

A. About a year and a half, I think.

5 Q. Are you running there now?

A. I am.

6 Q. In what condition is the track of the railroad between Fair Oaks and Yeddo now?

A. It is in good condition.

7 Q. When was it put in that condition?

A. It was put in that condition last summer.

8 Q. By whom?

A. By Mr. Kimball.

9 Q. What improvements were put upon the track last summer?

596 A. It was gravelled almost entirely along all the road.

10 Q. What else was done?

A. New ties, new bridges, culverts, and cattle g*au*rds were put in.

Question by the **Master**:

11 Q. New ties put in the entire length?

A. No; a great many new ties were put in.

Questions by Mr. **Harris**, continuing:

12 Q. Any new bridges?

A. Well, some new bridges.

13 Q. Tell me whether or not they tore out bridges and placed in new ones?

A. Yes, sir.

14 Q. Well, what about cattle g*au*rds?

A. Quite a number of cattle g*au*rds were put in.

15 Q. What about fencing the line?

A. Well, there is—I could not say how much fencing there has been put in; I think the line is almost entirely now fenced from Mt. Air to Rob Roy—must be about fifty miles.

16 Q. Now, you say it is in good condition; what condition is it in compared with the "Big 4" railroad that runs from here to Chicago?

A. My judgment is it is in better condition than the "Big 4"—better ballasted and better track—with the exception of about eight to ten miles between Fowler station and Goodland, that has not been ballasted with gravel.

597 Q. 17. But ballasted with dirt?

A. Ballasted with dirt.

18 Q. This gravel was, you say, put on by Mr. Kimbal mostly last summer?

A. Yes, sir.

19 Q. Tell me how it was put on.

A. When it was just commenced there was no regular gravel trains; there were two freight trains or combination trains—mixed trains, as they called it—running each way, one a day each way, and those trains hauled gravel I would say for over a month before there was any regular gravel train put on; they hauled in going north; they took from fifteen to twenty or twenty-two cars of gravel, and our trains were held while the gravel was being unloaded by the section men. That was done for awhile that the trains were held awhile, and after that the gravel was left on the main track, and the section men unloaded it by the time we got back the next morning. The southbound trains they would take from the gravel pits from six to twelve cars going south. It was run that way for a month or six weeks perhaps, and then they got on two gravel trains, and they still hauled gravel with the regular trains, and also the gravel
trains. Some days they would only get out one train-load
598 of gravel for each engine, and sometimes they would get out
more than one. It seemed to me they each ought to —
hauled at least three train-loads a day per engine, each one of them.

20 Q. How long since that they quit graveling?

A. It is, I think, some time in September that they quit—latter part of September.

21 Q. Since that time what time would the trains leave Yeddo in the morning, and what time would they get to Fair Oaks?

A. Our leaving time was 6.30 a. m., and we generally left on time, and our arriving time at Fair Oaks was 4.30; I believe that is the way it has been all summer; I am not sure; it may have been varied a few minutes. They generally make connection with the New Albany train going to Chicago at Fair Oaks, which arrived there about five o'clock, or a few minutes before five.

22 Q. How could you manage to put in so much time on a seventy-mile road?

A. We seemed to do it.

Question by the MASTER:

23 Q. What was the entire distance?

A. Seventy-six miles.

Questions by Mr. HARRIS, continuing:

24 Q. Then what time would you leave Fair Oaks to go to Yeddo?

A. We left Fair Oaks at 10.27 a. m.; we were due at Yeddo
599 at 6.55 p. m.; that has been our arriving time at Yeddo, I
believe, all summer—6.55.

25 Q. What about making time?

A. We sometimes would get there on time, but very seldom—generally from 8 o'clock to 1 and 2 a. m. the next morning; very seldom that we got there on time.

26 Q. How is it now?

A. Well, it is not much better now—very little.

27 Q. Tell me whether or not passenger agents are kept at most of the stations along the road.

A. At most of the stations; yes, sir.

28 Q. What provision has been made by Kimball to accom-odate the passengers along the line?

A. Well, there has not been any to speak of; no provision for it to amount to anything.

29 Q. What provision was there made for riding on the cars?

A. We had a combination car—baggage, mail, and express—at one end express, mail in the middle, and the other end was set apart for passengers.

30 Q. Any seats in the passenger department?

A. There were some chairs in the passenger department; in the forepart of summer they had some seats taken out of a car; they were taken out of a coach.

600 31 Q. Where was that coach?

A. Standing on the side track.

32 Q. Where?

A. At Attica most of the time.

32 Q. The place in which the passengers rode *was* there any windows to see out?

A. I think four small lights in the side door and a glass in the end door. There was no way to ventilate the car in the summer. It would almost roast a person in the summer; no way to see out only as they got around those doors.

34 Q. Can sit down and look out, like in a jail?

A. Yes, sir.

35 Q. Now, what accom-odation was there made for accom-odating ladies as is usually made?

A. We had. Kimbal cut off a small corner of my part of the car—it is about three by four—and fixed a sink in it that was used by trainmen and passengers of all kinds for the same purposes.

36 Q. What was the feeling of the public along the line of the road towards the road for this method of accom-odating the public?

A. The feeling of the public along the road was generally that Mr. Kimbal did not care whether he done passenger business and did not want to do any passenger business.

601 37 Q. What, if anything, have you heard Mr. Kimbal say on that subject?

A. I heard him say in a conversation—I do not recollect who it was [with], but it was with some parties—he did not want any passenger business; he did not care whether passengers got on his trains or not.

38 Q. What kind of a country is it through which this road runs?

A. Good country all the way of it; there is no better in Indiana, with the exception of along the *brakes* of the Wabash and after you strike the Kankakee marsh. It is in a very good country; it is a well settled country five miles south of Fair Oaks.

39 Q. Well improved?

A. Well improved.

40 Q. I want to ask you about the freight department a little. What do you know as to whether Kimbal has made any effort to secure and do frieght business for the accomo-dation of the public along the line?

A. Well, I don't know anything personally, only what I have heard.

41 Q. Well, what have you heard?

A. Well, I have heard—I know what the general feeling is.

42 Q. What is the general feeling?

A. The general feeling is he made no effort and did not want frieght business. That is the general feeling. That I
602 know. Mr. Worden, who has been connected with this road
before it was built—before it was finished—a live, energetic man, and would work up business if anybody could or would—Mr. Kimbal sent him out to work up frieght business for the road, which he did, and as soon as he worked up some business for the road Mr. Kimbal immediately discharged him, which looked very much like, to the people along the road, that he did not want business.

43 Q. Since he has been discharged has business kept up as good as it was before?

A. No, sir; it has not.

44 Q. I wish you would tell the master, if you can, when you made delays and how you would put in the time in going either direction?

A. Well, I will tell you; it looked to me like Mr. Kimbal wanted to make a show of a car record, of handling a good many cars. From what I would notice they would change the cars from one end of the side track to the other and take them down the road two or three or four stations, and they would stay there two or three days, and then we would likely get the same cars and put them in again into some other station. I am not mistaken about that, because that is the fact. They just stopped along the railroad and shifted the
cars from one of the side tracks to the other sometimes. That
603 is all I could say of it. That is what the conductors would
say about it also.

45 Q. Well, what did the conductors say about it when they were doing the work?

A. Well, they said to me just what I have repeated; that it was their object to make a car record. Of course they would have to report all cars handled.

46 Q. The conductors have told you that, have they?

A. Yes, sir.

47 Q. What have the conductors told you about the passenger business?

A. Well, I don't know whether I understand you. Do you mean on those mixed trains alone?

48 Q. At any time what they said while they were engaged in running the train?

A. They told me they were doing no passenger business to amount to anything.

49 Q. Did they say anything why they were not?

A. They said passengers would not ride on the trains without they were compelled to, and I have heard passengers say they would go a hundred miles around before they would ride on the road again; that is simply the fact. Let me explain: In running into Attica we frequently had passengers for Attica, and instead of running down to the depot they would stop the coach back on the Wabash bridge, and it would remain standing there from 20 to forty
604 minutes, which would make the passengers very indignant, and also the same thing would happen at Veedersburgh and nearly always at Yeddo. At Yeddo there was what we call a coal switch, a half a mile from the town of Yeddo, where the trains always stopped to do switching and making up the train for the next morning before pulling down for the depot.

50 Q. What attention has Mr. Kimbal given to the business of the road by being on the road within the last four or five months, to your knowledge?

A. In the last three months he has given it very little attention—personal attention, I mean.

51 Q. Do you know where he has been engaged?

A. Well, he has been engaged, I think, on the southern extension constructing a new road, and been in Chicago some and been in Grand Rapids, Mich.

52 Q. What speed do you run while the train is moving over the road?

A. The order is that we shan't run more than a mile in four minutes, which would make fifteen miles an hour.

53 Q. That is the limit?

A. Yes, sir.

54 Q. Well, how fast do you run?

A. Well, I expect sometimes we run a little faster than that.

55 Q. As your trains go along do you run pretty well according to your schedule time?

605 A. We are generally behind; generally speaking, we are behind.

56 Q. Any regularity in your being behind or does it vary?

A. It varies from one day to another. Last night a week ago we got to Yeddo at eleven o'clock, and last Friday night we got there fifteen minutes ahead of time; due there at 6.55 and got there at 6.40; but we are nearly always behind time; only once in a great while we get there on time; but we generally get to Fair Oaks on time. We have failed a few times, of course, to make the connection. They have to meet by Lochiel—that is, when the two trains met, and we generally have to wait then for the other train. It has only been the last month or so that they would run the train by there; we have been kept a few hours there.

57 Q. Any telegraph line there?

A. Telegraph line, but no telegraph station right there. It is about three miles to the nearest telegraph station on one side and about two miles on the other.

58 Q. Any depot there?

A. No, sir.

Question by the MASTER:

59 Q. No depot at the meeting-place?

A. No, sir.

Questions by Mr. HARRIS, continuing:

60 Q. Could you have passed at any of the other points?

606 A. Yes, sir; I have known them to hold us there for the gravel train three hours, and the gravel train could have gone to the gravel pit and loaded the train and been out of the way. And then they made our train a kind of a second-grade train, as we would have to keep out of the way of gravel trains.

61 Q. All summer?

A. Not all summer.

62 Q. For how long?

A. I do not know; well, I could not say how long.

63 Q. Gravel trains had the right of way?

A. Yes, sir.

64 Q. That was when they were hauling gravel on the road?

A. That was when they were hauling gravel over the road south to Yeddo. They held us at the gravel pit two hours, and when we got to Veedersburgh they held us there about that same length of time. And then going up in the morning we could not pass Veedersburgh until, I think it was, about thirty minutes after our time for leaving there; 7.20 was our time for leaving there, and we dare not leave there until about 7.50 that way.

65 Q. What was the reason of that order?

A. I do not know; on account of the gravel train.

66 Q. Tell me whether or not there has been a good deal

607 of stuff hauled from Fair Oaks to the south division?

A. Yes, sir; all the stuff—ties, iron, and everything.

67 Q. Outside from that, what other business has been done over the road?

A. They did right smart of business in stock for awhile, but that is about played out, as I understand it has gone to other roads. They are doing some business now in grain—hauling corn.

68 Q. At how many stations along the line have they maintained telegraph operators?

A. Well, there is one at Fair Oaks, one at Mt. Ayr, one at Forsman, one at Goodland, one at Wadena, one at Wyndham at the crossing of the "Big 4," one at Pine Village, one at Oxford, one at Attica, and they had one at Kickapoo; that is where the gravel pits was; then there is one at Veedersburgh and one at Yeddo.

69 Q. From your acquaintance with the country, the population along the line and the like, would this railroad be able to do a good passenger business if the accom-odation were given to the public?

A. I think so. Well, I don't know anything, only what the conductors told me the way they had been running before, and they said they were doing a good paying business, and Mr. Warden said they had plenty of money when they were running passenger trains—made plenty of money.

70 Q. What was Mr. Warden's position?

608 A. He was, I think, an auditor and general freight agent; something of that kind.

Cross-examination by Hon. R. B. F. PIERCE:

Mr. PIERCE: I object to all evidence in regard to the management and operation of the road for the reason that it is not covered, I think, by the order of the court.

Questions by Hon. R. B. F. PIERCE:

71 Q. How long have you been on that road, Mr. Rynearson?

A. I was transferred to that road on the first day of August, 1884.

72 Q. How long had the road been in operation at that time?

A. I do not know; I could not tell you. It had not been in operation clear through more than six months, I do not think; I think they made the connection with Attica in February, 1884, I think. That is my recollection.

73 Q. How did the trains run when you first came onto the road?

A. When I first went on the road they were running two passenger trains each way a day, and running a freight train each way a day; four passenger trains over the road each day.

74 Q. How long did that continue?

A. Very short time; there then was only one passenger train each way a day.

609 75 Q. Under whose management was that?

A. Under Mr. Crawford's management.

76 Q. Was Mr. Warden on the road at that time?

A. Yes, sir.

77 Q. Well, after the one passenger train was taken off, how did the train- run then?

A. They run leaving Fair Oaks in the evening, I think, about five o'clock, and we arrived at Yeddo at about ten o'clock, and left Yeddo the next morning, I think, between 4 and 5 o'clock—I don't recollect the exact time—and arrived at Fair Oaks somewhere about eight o'clock in the morning.

78 Q. The train, then, was run for the benefit of through travel to Chicago, was it?

A. That was the intention, I believe.

79 Q. Do you know what sort of a business they had under that arrangement?

A. I could not say, only what the conductors told me.

80 Q. You don't know, then, anything about the passenger earnings on those trains?

A. Oh, no; I could not say anything about that; that is, personally, I do not know.

81 Q. Don't you know, Mr. Rynearson, that the passenger business on that road has always been very light?

A. Well, it was; there was no big money in it, I don't suppose.

82 Q. Don't you suppose that the passenger business has been, from the beginning—that the passenger business has been very light?

610 A. Well, no; that it has been very light; I do not know that I could say that.

83 Q. Is not the business generally of a local character, and are there not very few passengers from Yeddo to Fair Oaks, or from Fair Oaks to Yeddo, or from Yeddo to Chicago?

A. Well, I don't suppose there was. The passenger travel was generally local, although there were some few passengers to Chicago.

84 Q. From what places?

A. From Veedersburgh and Attica and Goodland, and quite a sprinkling of passengers between those points.

85 Q. That is, between the local points?

A. Yes; I mean from those points to Chicago.

86 Q. But you have not any idea what that business amounted to?

A. Not personally; no, sir.

87 Q. I am asking personally?

A. No, sir.

88 Q. Your business was in the mail car and you did not have very good opportunities for keeping track, and in fact did not pay special attention to the passenger business?

A. On that passenger run I did not, because I did not have time. We were generally kept pretty busy in the mail and I know nothing about the passenger business scarcely, only by hearsay.

611 89 Q. Don't you know, from what you heard on the road, that one of the passenger trains was taken off because the travel was light?

A. I do not; no. I did not understand that. My impression was all the time that—well, I could not say that I heard it, but I think I did, and that has been my impression—it was because they hadn't the engines to run it.

90 Q. Because what?

A. They hadn't the engines to run it. That was my impression.

91 Q. Do you say that you have heard Mr. Kimball say that he did not care whether any passengers got on his train or not?

A. Yes, sir.

92 Q. When did you hear him say that, and in whose presence?

A. Well, I could not say when it was. He was not talking to me. I heard him make that remark. I am not sure that it was to Mr. Dwiggins. I am not sure that it was in Mr. Dwiggins' presence.

93 Q. You say it was where?

A. I could not say.

94 Q. Have you any idea where?

A. No; I could not say.

95 Q. Repeat all the conversation—all that you heard.

A. Oh, I could not do it. That is a common thing. I could not remember talking about the passenger run—about that, etc.

612 96 Q. When was it?

A. Some time during the summer—early part of summer or spring; perhaps early part of summer.

97 Q. Mr. Rynearson, what do you know, if anything, about Mr. Kimbal's efforts to get freight onto the road and haul it?

A. Just as I said; not personally.

98 Q. You know nothing about it at all?

A. Nothing personally; only what I was told.

99 Q. Don't you know that Mr. Kimbal made special effort to get freight onto that road?

A. No, sir.

100 Q. Don't you know that he fixed up stock-pens at various places and sent out a man to work up stock trade?

A. Yes, sir; I stated that in my direct examination; that I say.

101 Q. That is the fact, then?

A. Yes, sir.

102 Q. Did you ever hear of anybody offering any freight on that road that was not carried?

A. No, sir.

103 Q. All the freight that was offered was carried?

A. I do not know anything about it; it was all carried, as far as I know, personally. But what I was going to say, Swan, of Wadena, said that there was a lot of freight then that he could have got if he had tried for it.

613 104 Q. That who could have got?

A. Mr. Kimbal.

105 Q. What kind of freight was it?

A. I don't know.

106 Q. When did you hear Mr. Swan say that?

A. I do not recollect.

107 Q. He didn't say what kind of freight it was?

A. No; I did not ask him.

108 Q. You didn't hear him say?

A. No, sir.

109 Q. Do you know, as a matter of your own knowledge, why Mr. Warden left the Chicago and Great Southern railway?

A. Nothing; only what he told me.

110 Q. What he told you—what Mr. Warden told you?

A. Yes, sir.

111 Q. What do you mean by saying they tried to make a show by shifting the cars on the road?

A. I don't hardly know; only that is what they told me; I hardly know what it means myself.

112 Q. You don't know what you meant?

A. No, sir.

113 Q. Now, take any conductor and tell the master what he said about it; can you name any conductor?

A. Carnahan is one.

114 Q. Take Mr. Carnahan. Is he still on the road?

614 A. No, sir; he is not on the road.

115 [Q]. Where is he now?

A. On the Wabash now.

116 Q. When did he leave the Chicago and Great Southern?

A. I could not say just when—about four months ago.

117 Q. Do you know why he left the Chicago and Great Southern?

A. Well, he was discharged, I believe.

118 Q. State what Carnahan said to you about it.

A. That they were trying to make a car record.

119 Q. He said they were trying to make a car record; was that all he said about it?

A. That is what he said.

120 Q. You don't know what he meant by that expression?

A. No, I do not; I could not say positively what he meant.

121 Q. Mr. Carnahan simply said they were trying to make a car record?

A. Yes, sir.

122 Q. What other conductor talked to you about it?

A. I think all of them talked to me about it.

123 Q. Name another one.

A. Most all of them on the road.

124 Q. Name another one.

A. Mr. Parsons is another one.

615 125 Q. Is he on the road now?

A. No; he is at Washington, in this State, or at Vincennes.

126 Q. How long has he been gone?

A. About two weeks.

127 Q. Do you know why he left?

A. He was discharged, I believe.

128 Q. Who else talked to you about it?

A. Well, I could not say.

129 Q. Is there any conductor on the road that ever talked to you about it?

A. I do not know that there is.

130 Q. You think not, do you?

A. I do not know.

131 Q. You think, Mr. Rynearson, that this train on which you are a mail agent, spends too much time on the road?

A. I certainly think that.

132 Q. It would suit you a good deal better if they run over the road quicker?

A. Yes, sir; of course it would.

133 Q. But you are not able to say whether it is a wiser thing for the management to run those trains over as regular passenger trains or not?

A. No; I could not say. I think it would; that is my opinion.

134 Q. That is your guess about it, without knowing anything about the road?

A. Yes, sir.

135 Q. You don't know anything about it?

A. No, sir; I do not know that I do.

616 136 Q. You say that road runs through a first-class country?

A. Generally pretty well settled.

137 Q. How many good towns are there on that line?

A. Good country, although there are not very many good towns.

138 Q. How many?

A. Goodland is a very good town.

139 Q. What is the size of it?

A. Eight or nine hundred.

140 Q. Little country town, and it is not a county seat?

A. No, sir; it is not.

141 Q. What else?

A. Oxford.

142 Q. What is the size of Oxford?

A. About eight or nine hundred.

143 Q. Country town, and not a county seat?

A. Yes, sir.

144 Q. What else?

A. Attica; that is the best town on the road.

145 Q. That is the only good town on the road?

A. Yes, sir.

146 Q. Any other towns of any account?

A. Veedersburgh and Yeddo.

147 Q. So there really is but one good town on the road?

A. That is all.

148 Q. Well, Mr. Rynearson, if a larger number of trains were run on that road—passenger trains—it would probably increase the travel very much, would it? 617

A. I certainly think it would.

149 Q. Enough to pay for the trains?

A. Yes, sir.

150 Q. That is your judgment, sitting in the mail car, that they ought to put on more passenger trains?

A. That might sway my judgment a little, but I would think it would.

151 Q. Where would they likely increase their travel very much by putting on additional trains?

A. Well, they would get a good deal of Chicago travel.

152 Q. Where?

A. From Attica and Veedersburg.

153 Q. Have you any idea of how many tickets are sold from Attica and Veedersburg to Chicago?

A. No; I do not know, only what I have heard talked to me.

154 Q. Once in awhile?

A. I do not know how often.

155 Q. How many people do you think there are in that town that would go to Chicago?

A. There might be a number of merchants.

156 Q. Do you mean to say that it would pay to put on extra passenger trains for those merchants?

A. No, sir; not only for them.

157 Q. That is all the Chicago travel there is.

A. No, of course.

618 158 [Q.] Where is there any other?

A. Picking it up along the line.

159 Q. Where along the line?

A. Farmers.

160 Q. How often would they go?

A. Quite frequently—two or three times a year.

161 Q. Do you think there are enough farmers to pay for putting on another train?

A. That in connection with other business.

162 Q. In connection with other business—what business?

A. Local business; I know parties that have gone afoot part of the time between stations.

163 Q. Do you know a single case where persons have gone afoot?

A. I do, from Foreman to Goodland, a distance of six miles.

164 Q. Will you name one man that has ever walked from Foreman to Goodland?

A. No, I could not.

165 Q. You have heard that talked about in a joking sort of a way?

A. No, they meant what they said.

166 Q. Now, the fact about it is, Mr. Rynearson, that you don't know anything at all about the actual earnings of that road from the 1st of August, 1884, up to the present time, and you don't know whether it was a wise policy to take off that passenger train, and, even afterwards, to make the other passenger train a mixed train?

A. I could not say anything about it.

619 167 Q. So you have not been testifying from actual knowledge of the business of the road?

A. That is what I said.

168 Q. So that, after all, your judgment about the present arrangement not being based upon any actual information, you would not take much stock in it yourself, would you?

A. I do not know that I would. I know what the feeling of the people is.

169 Q. Mr. Rynearson, you have said that you don't know anything about the earnings of the passenger trains from that time, from the 1st of August down to the present time; I will ask you if you want it understood that you are giving an opinion here that ought to carry any weight?

A. No, I do not know.

170 Q. You don't think your opinion ought to have much — here?

A. I do not. No. I do not think it ought, perhaps.

171 Q. The present policy may be a wise one for all you know?

A. Perhaps the present policy may be a wise one, with the one train a day each way.

172 Q. You say that you usually got into Fair Oaks on time and usually got into Yeddo on time?

620 A. Oh, no; I never said that. It is not so at Yeddo.

173 Q. It is important to get into Fair Oaks on time?

A. Yes, sir.

174 Q. And they are usually on time in getting at Fair Oaks?

A. Yes, sir.

175 Q. It is not important to get into Yeddo on time?

A. No, sir.

176 Q. How much late do they — into Yeddo?

A. I have known them to not get there till one or two o'clock.

177 Q. That was an extraordinary time?

A. Yes, sir.

178 Q. What is the usual time?

A. Eight or nine o'clock.

179 Q. When they are due, then, at what time?

A. 6:55 o'clock.

180 Q. Where do you loose that time, above Attica or below?

A. Sometimes one place and sometimes another. Sometimes at the meeting point.

181 Q. Mr. Rynearson, you lay over at Fair Oaks and Yeddo?

A. Yes, sir.

182 Q. And don't lay over in Attica?

A. No.

183 Q. The offices of the company are at Attica?

A. Yes, sir.

621 184 Q. You ever go up in town there?

A. Oh, yes; I could go up in town when we got there in time. I always go up town going north, because I get my dinner there.

185 Q. So that you are busy then taking your dinner?

A. Yes, sir; we get our pay at the post office in Attica.

186 Q. Once a month?

A. Yes, sir.

186½ Q. Mr. Kimbal may be in his office at Attica all the time for all you know?

A. I have never been in his office—not in the general office.

187 Q. You don't know how much time Mr. Kimbal spends there?

A. No; personally I do not; all I know is what I understood.

188 Q. You have understood that during the last three months he has not been about Attica much, but that he has been at Chicago and on the extension?

A. Yes, sir; and at Grand Rapids, Mich.

189 Q. You have not any personal knowledge of the whereabouts of Mr. Kimball, have you?

A. No; I have not.

190 Q. And you don't know anything about it?

A. Nothing only hearsay; that is what I understood.

191 Q. Have you seen Mr. Kimbal on the road?
[A.] ——.

622 In the Circuit Court of the United States, District of Indiana.

HENRY H. PORTER *et al.*
v.
THE CHICAGO AND GREAT SOUTHERN RAILWAY COMPANY *et al.*
No. 7932.

In the Matter of the Intervening Petition of JOHN HACK.

Evidence taken in the above-entitled cause on the intervening petition of John Hack before Hon. W. P. Fishback, master in chancery of this court, on the 28th day of January and the 4th day of February, 1886.

Ap-earances: For the petitioner, Mess. Harris and Calkins; for the receiver, R. B. F. Peirce, Esq.

623 JOHN HACK, intervening petitioner, being first duly sworn, testifies as follows:

Direct examination by A. C. HARRIS, Esq.:

1 [Q.] ——?

A. My name is John Hack, and I reside at Lowell, Lake county, Ind.

1½ Q. Are you acquainted with the Chicago and Great Southern Railroad Co.—I mean its property?

A. I ought to be.

2 Q. How long have you known the property?

A. I commenced work there in 1882.

3 Q. And you have been acquainted with it since that time?

A. Yes, sir.

3½ Q. What condition was that property in when you began your suit in Jaspar county—the right, road-bed, bridges, etc.?

A. I done the grading.

4 Q. What condition was it in; was the road completed at that time?

A. Yes, sir; it was completed.

5 Q. What condition was it in?

A. It was in a fair condition to do all the business that was done on the road.

6 Q. Has there been any work done on it since?

A. Yes, sir; considerable work there; it has been nearly all graveled, and the bridges have been rebuilt and some fences built.

7 Q. If there are any bridges on the road that are not in good condition, which ones are they?

624 A. There is one trestle at Miladi (?) that I do not think is safe. They put on a new top, but the uprights are made out of all kinds of timber—red oak, hickory, sycamore, and anything that I could buy. I bought the timber. He said he just wanted it put up temporar-y, for the time being.

8 Q. Which way is that from Attica?

A. North, between three and four miles.

9 Q. How high is that trestle?

A. It is seventeen by twenty-seven feet high.

10 Q. How long is it?

A. I should think it was about 1,200 or 1,300 feet long.

11 Q. You say the road has been graveled by the receiver?

A. Yes, sir.

12 Q. What is the physical condition of the property as made by the receiver, with the exception of this bridge, as compared with other railroads in the West?

A. I think it is as good a road as there is in the State of Indiana.

13 Q. Was there any part of it graveled when the receiver took possession?

A. No; I do not think there was, only some little patches to keep the track in shape.

14 Q. Besides graveling, and rebuilding the bridges and putting up fences, has he put any other improvements on the property that you know of?

625 A. Not that I know of. He has put in a turn-table and machine-shops at Attica. He has a little machine-shop there, and they do most of their own repairs; and they have a three-stall engine-house.

15 Q. Have you done any work for the receiver, Kimball?

A. I have. I done some stone-work where the Great Southern runs under the Wabash road.

16 Q. When did you do it?

A. In October, November, December, and part in January.

17 Q. What is the balance due you for your work there?

A. Something over $2,000.00.

18 Q. Have you been paid?

A. Partly.

19 Q. How much has he paid you?

A. He paid me some, but he won't pay me the balance he owes me.

20 Q. What reason did he give you for not paying you?

A. The last time I spoke to him about it was in Attica. I saw him on the street and asked him if he could settle up with me, so I could get away the next morning; that I was sick and wanted to get home; and he says: "I won't pay you a dam*med* cent till I know who is on top; and then walked across the street to the house where he was stopping; and that was the last I got to say to him.

626 21 Q. He said he "would not pay you a dam*med* cent until he knew who was on top?"

A. Yes, sir.

22 Q. How much was the company owing to you at the time you brought your suit in Jasper county—how much does it owe you on your old account?

A. Over three thousand dollars.

23 Q. While you were working on the road did you become suffi-

ciently acquainted with the operation of it so as to know how the trains have been run by the receiver?

A. I have been up and down and over the road a good many times.

24 Q. How are trains run by the receiver?

A. They run a little less than ten miles an hour.

25 Q. How many trains does he move each way a day?

A. One each way, and twice a week he runs a stock train.

26 Q. He starts one train towards the north, and that comes back the next day, and he starts one train from the south, and that comes back the next day?

A. Yes, sir.

27 Q. Is it a passenger train or a mixed train?

A. It is a mixed train.

28 Q. What speed would be safe, excepting this trestle you speak about, to move a train over that road?

627 A. You could move a train over that road as fast as any of the roads in the West.

29 Q. What kind of a passenger coach does he run?

A. He has got a baggage car partitioned off into a mail car, express and baggage, and at the end of it he has got a few chairs—just common chairs.

30 Q. Chairs like you are sitting in?

A. No; they are not as good as these.

31 Q. Is that the sort of passenger coach that he produces?

A. Yes, sir.

32 Q. How many chairs does he furnish?

A. I should say maybe he has got 14 or 15 chairs.

33 Q. Have you been down on this road as far as Yeddo?

A. Yes, sir.

34 Q. From Yeddo to Fair Oaks what is the character of the country for fertility, and the character of the farms for productiveness, on each side of the line?

A. It is a nice country—splendid country.

35 Q. Is it a populous country—thickly settled?

A. All excepting a little piece at the north end from Fair Oaks south, probably four and a half miles; that *it* ain't settled very much. Mr. Kent has got a large tract of land there, and he has got it fenced in for pasture, but south of that it is thickly settled.

36 Q. Do you know how many stations there are along the line?

628 A. Fair Oaks, Mt. Ayr, Julian, Goodland, Wadena, Lochiel, Wyndham, Oxford, Pine Village, Winthrop, Kickapoo, Attica, and the other stations I ain't so familiar with.

37 Q. Stone Bluff and Veedersburgh?

A. Yes, sir.

38 Q. You do not know how many stations there are between Attica and Veedersburgh?

A. I do not know exactly how many there are.

39 Q. What kind of a passenger business was done when you were riding on the car? Was there many passengers riding?

A. Not a great many passengers. There would have been a great many more if the road had been run as it ought to have been.

40 Q. Do you know whether he maintained ticket agents at all stations or not?

A. I think he did.

41 Q. And the only passenger train is the one that you have described?

A. That is all.

42 Q. Was there any smoking on that car when you were on there?

A. Well, it is owing to whether — are any ladies on or not. If there are ladies on they go in the other end—in the baggage part.

43 Q. You say he run a mixed train. What kind of stuff was being hauled?

A. He was hauling grain and everything that would be naturally picked up along the line.

629 44 Q. Do you know, of your own knowledge, whether or not he has made any efforts since he has been receiver to accom-odate the demands of the farmers and people along at its stations, and to furnish them the cars to ship their stock in?

A. I think he has. He has built cattle-yards and such like, and fixed those up in good shape. He is building one now at Wyndham where they cross the C., I., St. L. and P.

45 Q. At what cost?

A. I do not know. I have no idea—they are pretty fair size; and I think he built that one at Pine Village. I do not know whether he is building any more or not. I have heard passengers say a good deal on the road they would never travel there again if they could get around it, because they did not like the way it was managed along on the road, running from half-past ten to after four to get to Attica, 56 miles from Fair Oaks.

46 Q. Has he given you an estimate for his last work that you did there?

A. He has given me estimates. He has given me estimates every month—that is, he retained 15 per cent. and kept back $500.00 on the last two payments, besides he did not give me no satisfaction in regard to it.

(The witness produced 4 estimates which had been fur-
630 nished him by the receiver, which were introduced in evi-
dence by the petitioner and are hereto attached, made a part
hereof, and marked Exhibits "Hack, 1, 2, 3, 4.")

47 Q. Where did you see Mr. Kimball?

A. At Attica, Indiana.

48 Q. Is that where he keeps his headquarters?

A. When he is there. He is not there very much. I staid there three or four days to see him.

49 Q. When was it you had this conversation with him when he came up and abruptly said he would not pay you a "damned cent?"

A. On the street—that is, we were near his office, and I asked him if he could settle with me so I could go home in the morning;

that I was sick, and he said, I won't pay you a damned cent until "I know who is on top," and then he walked right along across the street to the house where he stopped.

50 Q. When was it that you had this conversation with Kimball; how long ago?

A. I think it was about the 14 day of this January.

51 Q. How did he come there?

A. He came there on an engine from Veedersburgh, as near as I could learn.

52 Q. He came from the south?

A. Yes, sir.

53 Q. Do you know whether the engine that he was using was one that belonged to the Great Southern or whether it be-
631 longs to the other road down at the lower end?

A. I do not know.

Cross-examination by R. B. F. Pierce:

54 Q. You say they owe you about three thousand dollars on the old account?

A. Yes, sir.

55 Q. That was for work done before the road went into the hands of the receiver?

A. Yes, sir.

56 Q. And that is the account that is mentioned in your original petition under which the receiver was appointed?

A. Yes, sir.

57 Q. Can you come any nearer than that amount—you say that they owe you about $3,000.00—was it more than that amount?

A. I think it is a little over that.

58 Q. You think it is over $3,000.00?

A. Yes, sir.

59 Q. Was not it a little less than that—was not it about $2,800.00?

A. I do not think it was less than that. They have an offset against me. I claim only about $3,000.00. They owed me near $4,000.00. I shipped some freestone over the road and that cut it down. The freight, I think, came to something over $800.00. They owe me about $4,000.00 and I owe them about $800.00 and something, so I call it about $3,000.00.

60 Q. You say you have been doing some stone-work
632 under the crossing of the Wabash road near Attica?

A. Yes, sir.

61 Q. How much work have you done out there altogether?

A. There are the estimates—it is something over $6,000.00; I have been paid probably a little over $4,000.00.

62 Q. Have you finished the work?

A. Yes, sir.

63 Q. You are sure of that, are you?

A. I have finished all I can finish; the Wabash folks had not raised the track, and, of course, there are a few stones there to fix yet; our derricks were in the way of the Wabash folks, and the engineer of the Great Southern told us to take our derricks away.

64 Q. So that you virtually finished your work?

A. Yes, sir.

65 Q. When did you get through?

A. We got through the fore part of January; I think somewhere near the 4th or 5th.

66 Q. You have been done two or three weeks?

A. Yes, sir.

67 Q. You never had any trouble about getting your estimates, did you?

A. I always got the estimates.

68 Q. The engineer has always furnished you the estimates?

A. Yes, sir; but they failed to pay me all; he kept back $500.00 on me the month before last, and last month the same, besides

633 the 15 per cent.; the 15 per cent. is all right; he was to keep that back.

69 Q. Have you had any talk about his keeping back this $1,000.00.

A. No, sir.

70 Q. You never asked him why that was done?

A. No, sir.

71 Q. You do not know why it was done?

A. No, sir.

72 Q. It was about the 14th of January you met him at Attica and asked him to settle up with you?

A. Yes, sir; I think I got the last estimate on the 14th of January.

73 Q. Was that all the conversation you had with him that you have detailed in answer to Mr. Harris's question?

A. Yes, sir; I told him I was sick and I wanted to go home, and I wanted to know if he could fix it so I could go home the next morning, and he said he would not pay me a dammed cent until he knew who was on top.

74 Q. This fourth estimate is the completion of the work, is it?

A. It is not the final estimate; I did a little more after that.

75 Q. The engineer has not given you the final estimate?

A. No, sir.

76 Q. Did you ask him for it?

A. No, sir.

77 Q. How much work have you done since the 4th estimate?

A. Probably $150.00.

634 78 Q. Since Mr. Kimball has come in as receiver he has changed the running of trains, has he?

A. He has changed it some; yes, sir.

79 Q. Did I not understand you to say that he only run a train one way on the road each day?

A. That is all.

80 Q. Does not he run one train each way a day?

A. Oh, yes; he runs one train a day each way; he starts one at Fair Oaks and one at Yeddo.

81 Q. And Mr. Harris asked you if he sent that train back the next day?

A. It don't come back the same day.

82 Q. A train crosses each way in a day?

A. He runs a kind of a train each way.

83 Q. Have you ever been on the cars when there were not accommodations for all the passengers on the cars?

A. No, sir; I have not.

84 Q. They formerly run two trains a day; they run a passenger train each way in addition to the mixed train?

A. They run a passenger train and I think they made two trips a day, connecting with the New Albany road. That was before Mr. Kimball came in.

85 Q. When was that change made—before or after he came in?

A. After he came in.

635 86 Q. The change from that to the present style—was that done by Mr. Kimball?

A. Yes, sir.

87 Q. You do not know anything about the earnings of these passenger trains when they were run before?

A. No, sir.

88 Q. You do not know anything about the reason that prompted him to make those changes?

A. No, sir; unless it is to keep the road down.

89 Q. Do you mean to say that that is the reason for it?

A. That is the way it looks to me. I do not know anything about it.

90 Q. Did you ever ask Mr. Kimball anything about the reason why he made those changes?

A. No, sir.

91 Q. You say that Mr. Kimball has been taking some pains to work up the stock trade?

A. He has not taken any more pains than then had been taken, only he has put in some stock-pens.

92 Q. And been running stock trains?

A. They were running before he went in.

93 Q. Do you know anything about his putting out men especially to work up the stock trade?

A. No, sir.

Re-examination by A. C. Harris, Esq.:

95 Q. For what had the indebtedness that was existing at the time you began your suit in Jasper county accrued and under whose employment?

636 A. Under Crawford.

96 Q. And for what kind of work?

A. Grading.

97 Q. Tell me whether or not you have made out, or any one made out for you, a detailed statement, so as to show the balance that was due you from the road at the time you began your suit.

A. I think Mr. Stearin did; I gave him the amounts.

98 Q. Did you have contracts, or was the work measured up?

A. I had two contracts; I had a sub-contract under Irwin and I had a contract from the chief engineer of the Great Southern.

99 Q. How much was due from the chief engineer of the Great Southern?

A. $1,038.

100 Q. How much was due you on the contract you had under Irwin?

A. $2,077.00; and then there was $725.00 back on an old contract in 1882 for the same company.

101 Q. Were not those three items included in the aggregate of that indebtedness?

A. No; they owe me $725.00; and then they owe me, besides that, board bills—about $290.00, as I can recollect; I gave Stearin the full amount.

102 Q. Did they owe you anything else than those items?

637 A. No, sir.

103 Q. You say there was a set-off for freight?

A. Yes, sir.

104 Q. When was that hauled?

A. It was hauled in 1884.

105 Q. Was it before you brought your suit in Jasper county?

A. Yes, sir.

106 Q. Have you got with you the freight bill, or do you recollect the amount?

A. The amount is about $870.00, I think, as near as I can recollect.

107 Q. Did you give that amount to Mr. Stearin, too?

A. I do not think I did; they have got that in the office; I gave it to Mr. Shumway at the time he was receiver; I gave him the freight bills.

Recross-examination by R. B. F. PEIRCE, Esq.:

108 Q. You say the second item, $2,077.00, was due you as a subcontractor under Irwin?

A. Yes, sir.

109 Q. Was that due from the railroad company or Irwin?

A. I guess it would be due from Irwin, really.

110 Q. And not the railroad company?

A. Not direct.

111 Q. You had no contract with the railroad company for that item?

A. No, sir.

638 112 Q. It was with Irwin?

A. Yes, sir.

113 Q. And Irwin was the man that ought to pay you?

A. Yes, sir; but Crawford said he would pay me; he said he would keep it out from Irwin and see that I was paid.

114 Q. That is to say, that he was going to take the money that the company owed Irwin and pay it to you?

A. Yes, sir; but I worked for Crawford for four years, and he said he would see that I was paid.

115 Q. That claim, however, for $2,077.00 is against Irwin?

A. Yes, sir; but Crawford said he would keep it out of what was coming to Irwin and pay me.

By Mr. **Harris**:

116 Q. Do you know, as a matter of fact, when he settled with Irwin,.whether or not it was kept out?

A. I do not.

By Mr. **Pierce**:

117 Q. You do not know that he has ever had any settlement with Irwin?

A. I know he had a lawsuit.

And further the witness saith not.

Counsel for petitioner offered in evidence the contract as made
between the Chicago and Great Southern Railway Company,
639 by Geo. C. Kimball, receiver, and John Hack, dated September
11th, 1885, for abutment of under crossing of Wabash,
St. Louis and Pacific Railway near Attica, Ind., which contract was
admitted in evidence and is attached hereto, made a part hereof,
and marked Exhibit Hack No. 5.

Estimate No. 1.

ATTICA, IND., *Oct.* 14*th*, 1885.

Monthly estimate of labor [and] material furnished for construction of stone abutments for under crossing of W., St. L. and P. r'y near Attica by John Hack under contract of September 11th, 1885, to Oct. 1st, 1885:

Earth excavation, 326 cub. yards @ 14c.	$51	84
Masonry (concrete), $121\frac{1}{10}$ cub. yards @ $7.25	77	98
Total	$929	82
Less fifteen per cent. retained	131	70
Amount due Oct. 15th, 1885	$798	12

Seven hundred and ninety-eight and $\frac{12}{100}$ dollars.

(Signed) R. AUGST, *C. E.*

Paid.

Exhibit "Hack No. 1."

640 Copy.

Estimate No. 2.

ATTICA, IND., *November 14th*, 1885.

Monthly estimate of labor and material furnished to November 1st, 1885, for stone abutments for Wabash under crossing, near Attica, Ind., by John Hack, under contract of September 11th, 1885.

Quantities and prices.	Amount.	Less 15 %.	Balance.
Earth excavation, 326 cub. y'rd-, @ 14c.	$45 64	$6 85	$38 79
Earth back filling, 24 cub. y'rd-, @ 14c.	3 36	50	2 86
Concrete in foundation, 121.1 cub. y'rds, @ $7.25	877 97	131 69	746 28
Masonry in east abutment, 307.2 cub. y'rds, @ $7.25	2,227 20	334 08	1,893 12
Total to Nov. 1st, 1885	$3,154 17	$473 12	$2,681 08
Total to Oct. 1st, 1885	929 82	131 70	798 12
			$1,882 96

Amount due for Oct., 1885, eighteen hundred and eighty-two and $\frac{96}{100}$ dollars.

Copy of October estimate.

Paid.

Exhibit Hack No. 2.

R. AUGST, *C. E.*

641 Copy.

Estimate No. 3.

ATTICA, IND., *Dec.* 12, 1885.

Monthly estimate of labor and material furnished to December 1st, 1885, for stone abutments for Wabash under crossing, near Attica, Ind., by John Hack, under contract of September 11th, 1885.

Quantities and prices.	Amount.	Less 15 %.	Balance.
Earth excavation, 572 cub. y'rd-, @ 14c.	$80 08	$12 01	$68 07
Back filling, 24 cub. y'rd-, @ 14c.	3 36	50	2 86
Concrete in foundation, 275.2 cub. y'rd-, @ $7.25	1,995 20	299 28	1,695 92
Masonry in walls, 360.9 cub. y'rd-, @ -7.25	2,616 53	392 48	2,224 05
Total to Dec. 1st, 1885	$4,695 77	$704 27	$3,990 90
Less previous estimates—			
No. 1 798 12 No. 2 1,882 96			2,681 08
			1,309 82

Am't due Dec. 15th, 1885, thirteen hundred and nine $\frac{82}{100}$ dollars.

I certify that the foregoing estimate is correct.

Paid.

Exhibit "Hack No. 3."

R. AUGST, *C. E.*

642 Copy.

Estimate No. 4.

ATTICA, IND., *Jan. 4th*, 1886.

Monthly estimate of labor and material furnished to January 1st, 1886, for masonry abutments for Wabash under crossing, near Attica, Ind., by John Hack, under contract of September 11th, 1885.

Quantities and prices.	Amount.	Less 15 %.	Balance.
Earth excavation, 572 cu. y'rds, @ 14c.	$80 08	$12 01	$68 07
Earth back filling, 252 cu. y'rds, @ 14c.	35 28	5 29	29 99
Concrete in foundation, 275.2 cu. y'rds, @ $7.25	1,995 20	299 28	1,695 92
Masonry in walls, 613.95 cu. y'rds, @ $7.25	4,451 14	667 67	3,783 47
Total	$6,561 70	$984 25	$5,577 45
Less amount of previous estimates			3,990 90
			$1,586 55

Amount due Jan. 15, 1886, fifteen hundred and eighty-six and $\frac{55}{100}$ dollars.

I certify that the foregoing monthly estimate is correct.

Exhibit "Hack No. 4."

1,004.70.

(Signed) R. AUGST, *C. E.*

643 This article of agreement, made this 11th day of September, one thousand eight hundred and eighty-five, by and between The Chicago and Great Southern R'y Co., of the first part, and John Hack, of Lowell, county of Lake, and State of Indiana, party of the second part, witnesseth :

That the second party, for and in consideration of covenants and stipulations and agreements of said party of the first part, as hereinafter mentioned, promises and agrees to execute, construct, and finish in every respect in the most substantial and workmanlike manner, and to the satisfaction and acceptance of the chief or assistant engineer- of the Chicago and Great Southern Railway Company, or the said party of the first part, all the work on that part of the Chicago and Great Southern Railway Company at the Wabash under crossing on the line of said railway in the State of Indiana, for which prices are hereinafter affixed.

The said party of the second part agrees to commence said work in ten days from the date of this instrument, and to prosecute the same with such force and means as will in the opinion of said chief or ass't engineers ensure the completion of the same on or be-
644 fore the first day of December, A. D. 1885, being and comprising all the excavations for the foundations, the concrete foundations, masonry, and the back filling to the (3) feet above the level of the track of said first party, according to the plainest specifications now on file in the receiver's office of said first party and to the acceptance of the chief engineer [of] the W., St. L. and P. R'y, to be subject at all times during the progress of said work to the directions of said chief or assistant engineers or party of the first part as to the mode of doing the same, and to conform to the rules and general specifications hereunto attached and made a part of this agreement. Said second party for the consideration aforesaid also hereby agrees not to assign or transfer this contract or relet any of said work without the written assent of said first party, but shall constantly superintend said work in person.

Said second party also agrees not to employ any man, either as overseer or laborer, on said work who shall have been dismissed from any other work for bad workmanship, intemperance, or disorderly conduct, but shall, whenever directed by said chief or assistant engineers, dismiss any [and] every person who is disorderly,
645 intemperate, quarrelsome, unfaithful, or unskillful.

Said second party also hereby agrees to conform in all respects to the directions and instructions of said chief or ass't engineers, or parties of the first part, relative to the said work, and shall progress with the same at such time or times, in such manner, and at such particular points on the line of said work as said chief or ass't engineer- shall direct.

It is mutually agreed between said parties that — all disputes and misunderstandings between them in relation to any of the stipulations contained in this agreement or their performance by either of said parties *that* the said chief engineer shall be, and hereby is, made an umpire to decide all matters arising or growing out of this contract between them.

It is further mutually agreed between said parties that if the said second party shall, in the opinion of the first party, have failed or refused to comply with any of the stipulations contained in this contract to be performed by said second party said first party shall have the right to cancel this contract and declare the same void; in which event said second party shall have no claim
646 whatever on said first party for damages, compensation, or percentage retained by said first party, as hereinafter stated, either for material or work, but first party shall have a right to take possession of and hold said material and work absolutely, and shall be absolved as entirely and completely from this contract as if the same had never been made.

It is further mutually agreed and understood that if said second party shall at any time neglect or refuse to progress with the work as fast as in the opinion of the engineer or party of the first part (communicated in writing to said second party) may be necessary for the completion by the time specified herein, then said first party may declare this contract abandoned, and the amount which shall have been retained at the time out of the monthly estimates which have become due at the completion of this contract shall be forfeited to said first party, or said first party may at their option employ other parties to execute any part of the work and charge the cost of the same to the said second party, to be deducted out of such retained percentage or out of any payment that shall have become due on any former estimates or that may become due on any subsequent estimate.

647 It is further mutually agreed between said parties that said first party, whenever in their opinion it may be necessary to secure to the laborers employed by said second party their wages, is hereby authorized to pay said laborers the amount due them in the same manner said second party is to be paid, and their receipts shall be deducted from the amount which may be payable to said second party.

It is mutually agreed between said parties that, whenever in the opinion of the said first party it may be necessary to stop any or all of the work or to diminish the force employed, said first party shall have the right to do so and the party of the second part shall have no claim for damages, but shall immediately stop the work or diminish the force, as the first party may direct.

It is further mutually agreed between said parties that whenever the quantities or values of any work to be performed under this agreement shall be materially increased or diminised by conforming to the directions of the said chief or assistant engineer-, such increase or diminution in the amount and comparative value of the work shall be determined by the chief engineer, and the increase, if any, paid to second party, and the diminution, if any, deducted
648 from the amount to be paid to the said second party under this contract.

It is further mutually agreed between said parties that the party of the second part shall, without extra compensation, deposit all excavations upon the road in embankments, when embankments are needed, provided the extreme haul shall not exceed — feet, and all barrowed material for embankments shall be taken from such places as may be directed by the chief or assistant engineers, provided no barrowed material shall be hauled a greater distance than — feet.

It is further mutually agreed between said parties that the party of the second part shall not be entitled to any damages occasioned by delay in the performance of work by any other contractor adjoining the work herein contracted for.

It is moreover mutually agreed between said parties that the second part- shall deposit all surplus excavations not needed as embankments in such place or places as the party of the first part or the chief or assistant engineers may direct.

It is further mutually agreed between said parties that the exca-

vations for creek beds or ditches, or for changing water-
649 courses, or for highways shall be deposited as directed by
chief or assistant engineers, and such excavations, unless placed in embankments, shall be estimated and paid for as excavations.

It is mutually agreed and understood by the parties hereto that if the nature of the ground along the line of roadway is such as to necessitate the hauling of material in excavation a greater distance than — feet, the chief or assistant engineer may so order, and said second party shall be paid for such amount overhauled in excavation, and also in embankment the same as if material had been wasted from cut and the embankment barrowed. Exhibit Hack No. 5.

It is mutually agreed and understood by the parties hereto that all earth embankments shall be measured, estimated, and paid for in "embankment," as shown by quantities in the prism of the roadway, and all road-bed earth excavations not deposited in embankment as herein provided shall be measured and paid for in "excavation." No allowance shall be made for shrinkage of material removed from excavations and placed in embankment except upon very soft ground, where the proper allowance for such shrinkage or subsidence shall be determined by the chief engineer.

650 It is further mutually agreed between said parties that when any work under this agreement shall be done by said second party at the request of said chief or ass't engineers, and for which no price is specified, said second party shall be entitled to a price in the same proportion as the work for which prices are stipulated in this contract.

It is further mutually agreed between said parties that if said second party shall execute any part of said work defectively, and if such imperfections shall not be of sufficient — to require, in the opinion of said chief or assistant engineers, the taking up and rebuilding of such imperfect part, the said chief engineer shall have power, and he is hereby authorized, to make any deduction he may think proper from the stipulated price for such work.

It is further understood and agreed that any damage done by said second party, or by the laborers in his employment, or by reason of any neglect to property in the vicinity of the work under this contract while executing the same, shall be paid for by said second party, and in case there should be any unsettled claim for such damage
when the final estimate is returned said first party may re-
651 tain out of the moneys due under such final estimate a sum
equal to the amount of damages so claimed and the cost of settling the same, which sum they are to retain until said claims are determined by legal process or otherwise, when the amount so determined, with the costs added thereto, shall be paid out of said retained moneys, and the balance, if any, returned to said second party,

It is further agreed between the parties to this contract that any stone found in the cuts suitable for masonry on said railroad, on the work embraced in said contract, shall be hauled out of the same and deposited at such points as said party of the first part may direct, to be reserved for that purpose.

It is further mutually agreed and expressly understood that the decision of said chief engineer on any point or matter touching this agreement shall be final and conclusive between the parties hereto, and each and every of said parties hereby waives any and all right of action, suit or suits, or other remedy in law or otherwise, under this contract or arising out of the same.

652 And the said first party, in consideration of the fulfillment and performance of all the stipulations contained in this contract by said second party, to be by said second party fulfilled and performed, and whenever said work shall have been in the opinion of the chief engineer completely finished in every respect and performed agreeably to the various stipulations and specifications of this agreement and said chief engineer shall have furnished to said first party a certificate of the fact under his hand, together with his estimate of the quantity of the various kinds of work done by said second party under this agreement, which estimate shall be final and conclusive between the parties hereto, will pay to said second party, —— —— within thirty days after said certificate and estimate shall have been furnished by said chief engineer, the sum which may be due under this contract agreeably to said estimate at the following rates and prices:

Earth embankment:

Back filling, per cubic yard, fourteen cents (14c.).
Earth excavation, per cubic yard, fourteen cents (14c.).

In witness whereof the party of the first part has caused this article of agreement to be signed by its president, and the party of the second part hath signed the same the day and year first above written.

CHICAGO AND GREAT SOUTHERN
RAILWAY COMPANY,
By GEO. C. KIMBALL, *Receiver*.

653 *Continuation of the Examination of Witnesses in the Above Matter*.

INDIANAPOLIS, *Feb. 4th*, 1886.

In the Matter of the Intervening Petition of JOHN HACK.

GEORGE C. KIMBALL examined on behalf of the petitioner.

Redirect examination by A. C. HARRIS, Esq.:

1 Q. Where have you been engaged for the last three or four months past?

A. I have been on the line of the Chicago and Great Southern railroad.

2 Q. How much of that time has been spent between Yeddo and and Brazil, on the new road?

A. I think, perhaps, in the last three months I may have averaged twice during each month of going down there, either coming from this way going to Brazil, or the other way from Montezuma.

3 Q. What business had you down there?

A. I am vice-president of that new line being built there.

4 Q. Is that all.

A. Vice-president and general manager.

5 Q. As manager, what are your duties?

A. Simply to consult with the engineer.

6 Q. As vice-president and manager, do you have anything to do with the direction of the work on the new line?

A. No, sir; that is all laid out by contract.

7 Q. I mean as to the laying of the line?

654 A. No, sir.

8 Q. How many trains a day have you been running between Yeddo and Fair Oaks during the last summer and fall and this winter?

Counsel for receiver objected to the question for the reason that the inquiry is not covered by the order of reference in this matter.

Mr. Harris: I think I have a right to show what effort he has made to secure earnings.

The Master: It is not covered by this order, but I will let it go in, as it may save a new reference.

A. A mixed train leaves Yeddo in the morning, running down to Fair Oaks, and connects with the New Albany mail train going into Chicago, and one leaves Fair Oaks in the morning at ten o'clock and something, on the arrival of the mail train from Chicago, and that runs through to Yeddo; and then two days in the week, Tuesdays and Thursdays, I start a stock train from Attica and run that to Fair Oaks, returning the same evening.

9 Q. What was the leaving time of that train from Yeddo?

A. Six o'clock and some minutes.

10 Q. What was the arriving time at Fair Oaks?

A. Near five in the evening.

655 11 Q. Has that been the time-table for the last summer, fall, and this winter?

A. Yes, sir.

12 Q. What has been your receipts from passenger traffic per month; have you got any statement here that will show?

A. I have got a statement made up here.

(Produces statement.)

13 Q. When was this made?

A. It was made up within the last week.

14 Q. By whom was it made?

A. The auditor—book-keeper.

15 Q. Have you examined it to know whether it is correct or not?

A. I have not examined the figures on the books.

16 Q. I see in your statement here already given before the master the total receipts for earnings on the road during the receivership

to December 1st is $34,049.59. In that sum is the passenger traffic included?

A. Yes, sir.

17 Q. When were you appointed receiver?

A. April 18th, 1885.

18 Q. You took charge on that day?

A. Yes, sir.

19 Q. This statement that you have made will show the amount of passenger earnings you have received during that time, month by month?

A. Yes, sir.

656 20 Q. To whom did you sell these certificates that have been issued by the court from time to time?

A. To Mr. Porter.

21 Q. The time of running over this railway is about eight or nine miles an hour?

A. Yes, sir; eight to ten; as a rule, not to exceed 15.

22 Q. That is, they should not run faster than 15?

A. No, sir; that is, if they get behind doing local work at stations and switching, that they should not run to exceed 15 miles an hour in trying to catch up; and if they were delayed, for instance, about the mails that, in order to make this connection with the New Albany and Chicago road, they were just to set the freight right off and go ahead and make the connection with the New Albany and Chicago road, and of course telegraph offices are frequent on the road, and the men in charge handling the trains could get orders to leave the freight and go on with the mails.

23 Q. How many telegraph offices were maintained on the line?

A. 10 during the full term.

24 Q. How many ticket offices were maintained on the line?

A. Each of those sold tickets.

25 Q. Did you have ticket offices at any other place than telegraph offices?

A. Yes, sir; there were tickets sold at Julian, where there was no
telegraph office, and at Wyndham they had tickets also, and
657 and then we had men at Rob Roy and Stone Bluff who sold
tickets. There were no offices at either of those stations.

26 Q. What were your monthly expenses for telegraph operators?

A. I used to divide their service.

27 Q. How much did you pay in the way of wages to those telegraph operators and ticket agents combined?

A. I would have to turn to the balance-sheet to show that.

28 Q. Have you any idea about it in your mind?

A. The average pay is not to exceed $25.00 a month to some men, and some get $40.00, and some get $60.00, and others get 10, 15, or 20 dollars. It depends on what they have to do.

29 Q. Will you figure up and give to the reporter to-morrow morning the monthly expense for telegraph operators and ticket agents combined?

A. Yes, sir.

Examination by R. B. F. Pierce, Esq.:

30 Q. What is that report you have in your hands there that you have just quoted from?

A. It is a statement made up by the auditor in the general office of the receipts from passengers.

31 Q. Made up by the general auditor and furnished to you?

A. Yes, sir.

658 32 Q. What periods does it cover?

A. It commences November 24th and goes up to and including January, 1886.

Mr. Pierce: I will offer this statement in evidence.

The statement above referred to was admitted in evidence and is attached hereto, made a part hereof, and marked Exhibit "Kimball No. 1."

33 Q. Are you acquainted with John Hack?

A. Yes, sir; I met him this past season.

34 Q. What work has he been doing for you as receiver?

A. He took a contract to build the under crossing where we cross the Wabash railroad.

35 Q. Has he got his work completed?

A. Yes, sir; just completed last week.

36 Q. When did you get his final estimate?

A. January 28th, 1886.

37 Q. How much is there due him now, according to that final estimate?

A. The balance due John Hack on the final estimate is $1,120.19.

39 Q. Have you seen Mr. Hack lately?

A. Yes, sir.

40 Q. When did you last see him?

A. I saw him at Attica.

41 Q. Was that before or since you got this final estimate?

A. Before. This was forwarded to me. I went home sick 659 a week ago last Tuesday. I was suffering with a very bad cold, and I did not seem to rally from it, and I ran over home a few days to see if I could not get better.

42 Q. Mr. Hack stated here the other day in substance that he had met you in Attica, I think, about the 14th day of January, and asked you for a final settlement and closing up of his contract, and that you told him you would not pay him another dam*med* cent until you found out who was on top.

A. I think those were the precise words.

43 Q. I wish you would tell the master how that conversation came up and what it was all about.

A. Well, this Mr. John Hack came to me about the time I was asking an order from this court to put in this under crossing on this railroad, and he said: Kimball, those stones that you see lying there are stone that I got out for that purpose and I have been laying out of my money, and I would like to do the work. I said I have got no objection; it don't make any difference to me who does it, only I want to get the work done as good and as cheap as I can, and if I can aid you I will do it, but the court won't let me pay you one dollar more than anybody else, and as you say you own those stone you certainly ought to do it as well as anybody. He 660 said he thought so too. I said, you put in your bid, and he did, and there were three bids altogether, and Hack's was a trifle the lowest, and I said to the engineer that I was very glad Hack had got it—he had good stone there and it would help him out. He went on and commenced the work, and when the first month's estimate was made he came down to settle up. I said to him, I do not want to get into any trouble with the court about this matter, and I want to see that the labor and the materials purchased are paid for first, and you make out your pay-rolls and I prefer to pay the men here or see that they are paid, and also the materials, and he said all right, and there was a balance after paying the men and the bills for material that came in.

44 Q. Have you got that statement that was made up?

A. Yes, sir; $798.12 was the first month's estimate. That was for the September estimate.

45 Q. How mech did you pay him?

A. I paid pay-roll on October 15th, $281.06; amount paid Andrews and Co. for cement, $148.42; understand that these were with his approval; L. M. Greene, sundry material, $35.70, which left a balance of $332.94 that I paid Hack in money.

46 Q. How about the next month?

661 A. The October pay-roll was paid November 20th; the estimate for that month was $1,882.92.

47 Q. How was that paid?

A. The October pay-roll, which was paid Nov. 20, was $1,396.95.

The MASTER: I do not think there is any necessity for thus going into detail in regard to how those estimates were paid. Direct his attention to this conversation that Mr. Hack testified about.

(The WITNESS): Mr. Hack came to me—I think it was on Thursday—and said, "By the way, can I get you to allow me this last estimate?" I says, What have you done with Painter, in addition to these orders that you have brought in here?

48 Q. What were those orders?

A. He had given orders on me; and he said, Kimball, I am owing some men here in town, and I could not keep them quiet, and I have given them orders to keep them still, and whilst I do not want you to pay them, I want to keep them quiet; they just bother my life out of me. I said, I could not pay any orders until this work is done. I do not know anything about how you are going to come out on your contract or anything of the kind. He said, I do not want you to pay them, but I have got to do something to keep those fellows quiet. After I paid, I think, three estimates, there 662 had been quite a number of these orders coming in, a record of which I have here; there was a notice served on me by Mr. McDonald, of Attica, in favor of John Painter. He was formerly a partner of this John Hack at the time this complaint was made out,

or claimed to be a partner, for $400.00, forbidding me paying Hack any more money until this matter was settled. It was a matter I knew nothing about. I saw him and Hack talking one day in the hallway of our office as I came out, and I said to Painter one day, after I had seen them talking together, Did you and Hack get your matters settled up? He said, "No." I said, Are you going to settle? He said he did not know. Then Mr. Hack came to me two weeks ago last Thursday and wanted to get some money. He says, Can I get some money; I want to get away from here? I says, John, you have done nothing with Painter? He says, "No." I then asked him what he was going to do about those orders. He did not know—said, let them go. I says, I ain't going to pay you a dammed cent until I know who is on top. I ain't going to have the court getting after me about this matter. I have paid you now three estimates, and I am going to know now that everything is right before
663 I pay any more. I do not like the looks of your pay-roll and everything else. The thing seems to be mixed, and I won't pay you another cent until I know how I am coming out.

49 Q. So that is what you meant when you told him you wanted him to settle those controversies over there—that is what you were talking about?

A. We were talking about a settlement of this thing, and I would not pay on account of these claims that had been put in the orders that he had asked me to accept and not pay, as he wanted to keep the men quiet; and then this claim of $400.00 that Painter had put in—this former partner.

50 Q. You say your remark had reference to those orders and this claim of his former partner?

A. Yes, sir; and nothing more. And then the next day after that the subcontractor—and by the way I did not know that there was a subcontractor until then—he wanted to get some money, and I said to Mr. Elgin, I am ready to pay you this money any time as soon as I can find out who this money belongs to. In addition to these orders that Hack has given there is this claim of $400.00 of Painter, and your pay-rolls are mixed up, you being in one pay-roll and then you being in another. There is no system about it. I am
664 just as anxious to settle this thing as you are and have it out of the way. Mr. Augst, the engineer in charge of the work, will be here next Tuesday. I had a message lying on my table then, and I said, Here is a message saying he will be here Tuesday; and if you will write to Hack and tell him to be here next Wednesday we will all sit down and go over it and see if we cannot fix things up and get them in shape. On Tuesday I felt so badly I went home in Michigan, and on Wednesday I telegraphed to the general office at Attica asking if Hack and Augst were there, and, if they were, to have Augst make out a final estimate of that work and a copy of the pay-rolls outstanding and send it to me; and this is the one I alluded to—this is the final estimate. I could not get there, and I did not want to disappoint him, and I telegraphed him what to do.

51 Q. So that in that conversation with John Hack your remark related entirely to those matters in dispute of which you have spoken?

A. Nothing else whatever. There was nothing else spoken of or thought of as far as my mind was concerned, because that was our conversation. If I remember right, as I came downstairs from the
office he came along—he might have been in the post office
665 or he might have been standing there—and he walked along
the street with me. He had been in and out of the office a good many times, and matters were all mixed up, and it seemed to me like a conspiracy to get every dollar he could and no matter how he came out in the end, and I said to Augst, I do not know about that fellow Hack; I do not know what to make of him, and I am not going to pay him another dollar until I know how I am going to come out.

52 Q. Referring to these matters before?

A. Yes, sir; we had not talked about anything else.

53 Q. Are you acquainted with Mr. Rynearson, the mail agent on the road?

A. Yes, sir; I have met him frequently and rode on the car with him.

54 Q. Are you acquainted — Zimri Dwiggins, of Oxford?

A. Yes, sir.

55 Q. Did you ever say to Mr. Dwiggins or to any one else in the presence of Rynearson that you did not care whether any passenger got on your trains or not?

A. I will say no to that at once. I want all the passengers I can get.

56 Q. Shortly after you came into possession of the road as receiver I will ask you what notice or information you sent out
666 to the agents along the line of the road, and if you sent any
such and have a copy of it with you let us see it.

A. I have it here.

57 Q. What is it?

A. It is a letter to all agents, dated May 26th, 1885.

58 Q. Did you send a copy of that to the agents?

A. I did; to each agent on the road.

Counsel for the receiver offered the above letter in evidence, which is attached hereto and made a part hereof, and marked "Exhibit Kimball No. 2."

59 Q. I will ask you what effort you have made to secure passenger and freight business for that road since you have been receiver?

A. In addition to writing that letter to the agents, I have used every personal endeavor to secure both freight and passenger business, more especially freight, for the reason that the property was not in a condition to run, and would not warrent our running a first-class passenger train. When I took the property they were running a passenger train, leaving Fair Oaks in the morning and running to Yeddo and return, having just time enough at Yeddo to turn their engine and hurry back. The locomotives were old ones,

giving out first in one place and then another. Having time
667 to make connection several times they lost it; they could not get there; something was the matter with the engine, and when we began to take and compare the earnings with the expenses we found it would not pay to hire a locomotive and put on a train and run it there; we would not get enough out of it to pay operating expenses of the help, to say nothing about the wear and tear of the coaches. And then again the two coaches that were there in the interest of the trust company were very much defaced and the varnish was commencing to wear off, and unless they were varnished at once and taken care of they would have to be painted, and I took off the regular passenger train and I took some seats out of one of the coaches and fitted up one end of the baggage-car with seats the same as in the coaches that would seat forty passengers and partitioned off one end for a water-closet for the passengers and made it a mixed train up and back.

60 Q. Do you remember when you made that train?

A. I think in two or three weeks after I was appointed receiver—just as soon as I could get the cars and get them fixed.

61 Q. And this statement which you have already furnished of the passenger earnings will show the difference in the earn-
668 ings between the new arrangement and the old, will it?

A. Yes, sir; it shows the earnings of each month.

62 Q. State what complaints were made to you in regard to the character of your accomodations, if any, by people traveling over the road.

A. Sometimes people will say, Why cannot you put on a passenger train? And I will say, Just as soon as we can get things in shape to warrent our running it we will try it; but I am satisfied that it won't pay us to run a line of cars over this line. For instance, you take Attica—it is the largest town on the road; one would say, on going to Attica and looking about there and seeing the business there and the people coming to town, that we ought to get business there; but I was terribly fooled at the amount of business we get there, and I found in conversing with the merchants that a great majority of the goods are bought in Indianapolis and Cincinnati, and a great many are bought in New York. There is very little comes from Chicago to Attica. You can go to Goodland and take the Pan Handle; and to Wyndham and take the Big Four; and to Oxford, the Lake Erie and Western, and so on, so that our
669 travel is essentially local from one small station to another, and when I came to figure up the total receipts there was not enough to pay the help, and the question arose as to what was the best thing to be done, and I thought the best thing to do would be to go slow and go sure, get the road in proper condition to do business and then try and see what can be done. I wrote to Mr. Adams the condition of the cars and told him I was in no situation to make the necessary repairs on them and asking him if he would authorize me to go ahead and do it.

63 Q. The change you made in taking off the regular passenger

train and putting on a mixed train was made because, in your judgment, you thought it was the proper thing to do?

A. Yes, sir; if I owned the property myself I should reduce the expenses right down in that way myself. I have done just as I would have done if I owned it myself.

64 Q. What do you know about the train men handling cars between stations simply to make car record—taking cars up to one station one day and then the next day the train bringing them back, just to make a car record?

A. The same cars?

65 Q. Yes.

670 A. I cannot think that would be done unless the trainmaster ordered them up from some station for some purpose.

66 Q. Mr. Rynearson stated last night that the train in going over the road would pick up empties at one station and haul them up to another station, and the next day they would haul them back; and he says the conductor told him that they were doing that simply to make a car record and to show the handling of cars; do you know anything about that?

A. No, sir; I never heard of it.

67 Q. Do you know whether anything of that kind was ever done?

A. No, sir; I cannot see why it should be done. It would be foolishness.

68 Q. You do not know anything about it?

A. No, sir.

69 Q. Nothing of that kind was ever done with your consent?

A. No, sir.

70 Q. I will ask you whether this car that you fixed over furnished comfortable accommodations for the passengers?

A. It was very comfortable indeed. After I got the coaches both fixed up—varnished and fixed up—and the coaches put in good, safe condition, I put those seats back into the coaches, with the baggage cars, and I found that I was not getting a dollar
671 more by hauling the coaches over the line of the road. I was getting no more earnings.

71 Q. So you took them off?

A. I said to the train man, I do not see that we are getting a dollar more hauling these coaches over the line than we were without them, after we have got them fixed, and it is costing us more money, and giving us nothing; and I ordered him to go and buy me some good chairs and put them into the baggage car I did not care to take the seats out and go to that expense; the business would not warrant it. I have never been in the cars at any time when there were not eight or ten chairs vacant, except one time when a bridge gang was going down to work, and I wanted the conductor then, but he did not do it.

72 Q. So that car has answered all general purposes?

A. Yes, sir; it rides just as well as a coach. It has glass in an elevated roof, and there is glass in the large door of the baggage car. It is light, warm, and comfortable, and has a water-closet in it. If ladies are there and want to go in, they can go. It is a better car than two-thirds of the companies are running, and then in the ends there are lights in the door. I did not hear any fault found with it.

Re-examination by Mr. **Harris**:

672 73 Q. This estimate that you have produced here to-day—you told us that is the passenger earnings, and you told us that you did not compare it with the books—this little slip that was furnished you by the auditor?

A. I told the auditor to get a complete statement.

74 Q. It was furnished by the auditor at your request?

A. Yes, sir.

75 Q. Whether it is right or not, you do not know of your own knowledge?

A. I did not go and figure it over.

76 Q. How many coaches did you find on this line when you were appointed receiver?

A. Two.

77 Q. Where have they been kept during your receivership?

A. I decided to take the coaches off. I took them off one at a time and put it in the engine house and hired three or four men to clean them and put them in order and repair them in good shape.

78 Q. How long ago were they repaired?

A. I could tell by my pay-roll. I think we commenced in June on the first one, and it was probably nearly six weeks before it was completed, and then we took the other coach in.

79 Q. They have been kept in your possession all the time?

A. Yes, sir.

673 80 Q. Where was this car left after you took the seats out?

A. I think it was at Attica.

81 Q. Standing on the side track?

A. Part of the time; and part of the time it was in the shop. I had the seats removed from the two coaches.

82 Q. What did you have those cars repaired for?

A. Because it was injuring the property; they needed to be repaired.

83 Q. How much did it cost to repair those cars?

A. I could not tell you, because it came along in different months, and I cannot tell you now.

84 Q. You say that you have fixed up a place for passengers. In that car that you fixed up was there any way for passengers to see out at all—when a passenger was sitting in a chair could he look out?

A. Yes, sir.

85 Q. How?

A. There were windows in the doors.

86 Q. Is it not true that those windows were small windows, so that passengers in chairs had no view of the outside at all except through a hole in the skylight?

A. No, sir; that is not true.

87 Q. Do you keep the same number of passenger conductors that you kept when you ran two trains a day over the line?

674 A. No, sir; I just keep the mixed-train man.

88 Q. And you attribute, as I understand you, the small amount of revenue from the passenger traffic to the fact that there is no through-passenger travel on the line?

A. That is the truth.

89 Q. You think it would not pay your railroad to operate a passenger train?

A. No, sir; it would not.

90 Q. If it was at a loss that passenger trains should be operated there, pray tell me what was the necessity for making the large outlay that you have made there to put this road in the condition that it is now—well graded, well bridged, well fenced, and everything of that kind—if it won't pay for operating a passenger train?

A. I am speaking of the old condition of the property.

91 Q. Is not the property in most excellent condition now?

A. A portion of the road-bed is not.

92 Q. Is not most of it in most excellent condition?

A. The majority of it.

93 Q. Is it not in a condition that passenger trains should be run with safety at the rate of 30 miles an hour?

A. All except about 12 miles an hour and four different trestle-works.

675 94 Q. How much have you spent on this property in the way of gravel, ties, bridges, fences, cattle-*gaurds*, and the like?

A. I do not just remember; I have made up statements at different times.

95 Q. You have spent over $100,000.00?

A. Yes, sir.

96 Q. And yet at the time you were making this large expenditure upon this railroad you did not think it could be operated with profit as a passenger railway at all?

A. At the time I was doing it?

97 Q. Yes.

Ans. No, sir.

98 Q. You say you- judgment is that this railroad, running through the country it does and being bisected by so many railroads running east and west, would not pay the operation of a passenger train upon that road, and that the only way you could get any revenue at all that would be revenue would be by running a mixed train. Am I right?

A. That is the former condition of the road.

99 Q. I am talking about the present condition of the road.

A. The present condition of the road would not justify it; but later on, say when I get the road properly fitted up, the bridges repaired and rebuilt, and the track properly ballasted, I should probably put on one or more passenger trains.

100 Q. What for?

A. Because then I could compete with the other lines going to Chicago.

676 101 Q. Cannot you run as fast upon this road to-day as upon any of the railroads in the State of Indiana?

A. I can, I say, to-day, except this 12 miles.

102 Q. How long since you quit putting gravel on the road?

A. Since November.

103 Q. Have you put any on there since September?

A. Yes, sir.

104 Q. Where.

A. Between Yeddo and Oxford.

105 Q. How many men have you had employed at graveling since Sept.?

A. I can tell by referring to the pay-roll.

106 Q. Since September has not your attention been devoted to the new company building a new line south?

A. No, sir; I have had nothing to do with its construction; that has been entirely in the hands of the chief engineer. I was appointed vice-president and general manager, but my time has not been spent down there. I keep no account whatever in my office of the new line.

107 Q. Is it true that since you have been in the possession of this property the revenues which you have received from its operations have been less than the outlay you have made by way of operating the line?

A. Been a loss, on account of the way I have operated it.

677 108 Q. Less than the cost of operating it—is that true?

A. I do not understand your question.

109 Q. Have the revenues which you have received from the passenger and freight traffic upon that line been equal to your outlay for train men, telegraph service, ticket-agent service, and your expenses in operating the line, including your trust-car rentals?

A. No; I should say not.

110 Q. Then, you have operated the road at a loss?

A. That is to say, I could not tell without going into detail figures in regard to it.

111 Q. When did you get the locomotives for hauling the gravel?

A. I leased two in the first place and then I asked the court to let me purchase two.

112 Q. Which were the better, those that you have employed pulling the public trains or those used on the gravel trains?

A. The new engines drew the regular train; there were two old engines there that Mr. Foster had when I took the road; they were defective and inefficient; the two that I purchased was after I had got the order from the court.

113 Q. Did you use those two engines that you bought for graveling or the other service?

A. Sometimes one, sometimes the other; they were all alike—the same make.

114 Q. Were the ones that you bought as poor as the ones you found there?

678 A. The two that I purchased were of the same manufacture as the one that Mr. Foster had leased.

115 Q. You said a moment ago that when you went there the two leased engines that you found there were defective and insufficient?

A. No, sir; not the two leased engines; there were two old engines there.

116 Q. Are the two engines that you could not do anything with the engines which you found there under lease?

A. Oh, no.

117 Q. How many engines have you got now on the Chicago and Great Southern road?

A. The two that the court authorized me to buy and the two old ones; one of them we can use a little on the road down around where we have been repairing the track or bridges; it can hobble along a little, but I do not consider that it is a economy to lay out a dollar on it again.

118 Q. How many engines had you in use while you were graveling the road?

679 A. I had the two engines that were leased and then when the court gave me an order I bought two more; that gave me four.

119 Q. Which were the better ones, the engines that you used on the train to accommodate the public or the ones that were used on the gravel trains?

A. Those four were all alike.

120 Q. How fast could those engines run on a good track?

A. 25 or 30 miles an hour.

121 Q. Coming back to the Hack business, have you got those orders which you have mentioned in your testimony and notice?

A. I think so. (Produces paper.)

122 Q. This paper is, I see, in the handwriting of your auditor?

A. Yes, sir.

123 Q. When was this made up by your auditor?

A. At different times; copied off from those orders that were left there by Hack.

124 Q. The question was whether you had what you claimed to be the orders that were given by Hack?

A. No, sir.

680 125 Q. Have you got the notice that was served on you by Mr. McDonald?

A. Yes, sir. (Produces paper.)

126 Q. Did you ever show it to Mr. Hack?

A. No; but he knew all about it. He talked to me about it.

127 Q. You say you did not show it to him?

A. No, sir.

128 Q. When you went up to Attica that day, did not he tell you that he had been waiting there a day or two for you?

Ans. No, sir.

129 Q. Which direction did you come to Attica from?

A. I could not say at this present time.

130 Q. Did not you come on a special engine from the south?

A. I am inclined to think now that I came from Montezuma on engine that was coming up to a washout to be exchanged for another one.

131 Q. When you got there you found Hack there?

A. No, I think it was the next day; that is my impression—that it was some time during the next day that I met him when I was coming out of the office.

681 132 Q. Had you had any conversation with him from the time you came upon the locomotive until this time that you met him?

A. I did not see him on the locomotive.

133 Q. From the time you came to Attica that time, had you had any conversation with him before the time you had this conversation about not paying him a damned cent.

A. No; I think not.

134 Q. So that he did ask you for a settlement, did he?

A. Yes, sir; he asked me if I would not pay him some money.

135 Q. His work was then done?

A. No, sir.

136 Q. Had not you told him at that time to take down his machinery?

A. No, sir; because the engineer had that in charge when that was taken down.

137 Q. You do not know whether the engineer had told him that he had done all the work he could, and he could take it down?

Ans. No; I could not say.

138 Q. Who was your chief engineer?

A. Mr. Augst.

682 Q. Is this his handwriting? (Showing witness estimate introduced by Mr. Hack, showing amount due January 15th, 1886, to be $1,586.55.)

A. Yes, sir.

140 Q. This final estimate that you have brought here dated January 28th was made at your request?

A. Yes, sir; as I could not be here to meet Hack, as I told Mr. Elgin, and not to disappoint him. I telegraphed to have Augst make up a final estimate and send it to me.

141 Q. That was long since this conversation, because the conversation was before the 28th of January?

A. Yes, sir; it was a week or ten days before.

142 Q. And you say he asked you for some money?

Ans. Yes, sir.

143 Q. And you told him that you would not pay him a damned cent?

A. Yes, sir.

144 Q. Until you found out who was on top?

Ans. Yes, sir.

145 Q. Was that all you said to him about it?

683 A. No; I had asked him previously if he had settled with Painter and he said no, and I said these orders are coming in

pretty lively and I cannot tell whether there is anything due or not, and I do not propose to pay you a damned cent until I know who are on top. Just as soon as the estimate would come in he would come in and see if he could get some money.

146 Q. When was this estimate, dated January 28th, made up?

Ans. January 28th.

147 Q. When did you get it?

Ans. I think it was February 1st.

148 Q. Have you paid out any money between January the 14th and January the 28th on account of Hack's indebtedness?

A. I think I paid the pay-roll. I left a check with the paymaster for the pay-roll before I went home sick.

149 Q. This final estimate does not include his 15%, does it?

A. It is my understanding it includes everything.

By Mr. PIERCE:

150 Q. I will ask you what the fact is in regard to the rights 684 of trains, whether this mixed train, as you call it, carrying passengers, is made superior or subordinate to your gravel trains?

A. Superior.

And further the witness sayeth not.

Counsel for receiver introduced in evidence the final estimate, dated January 28th, 1886, which is attached hereto, made a part of hereof, and marked Exhibit Kimball, No. "3."

G. W. DUNLOP, examined on behalf of the receiver, being first duly sworn, testifies as follows:

Direct examination by R. B. F. PIERCE:

1 Q. What is your business?

A. I am auditor for the receiver.

2 Q. Did you prepare this statement, "Exhibit Kimball, No. 1," at the request of the receiver?

A. Yes, sir.

3 Q. What did you make it up from?

A. I made up this statement from a telegram furnished me by my book-keeper. The balance-sheet shows it in detail for the whole period. In order to divide it by months I telegraphed to 685 him, asking him for the figures, and he wired me, giving the figures, and I have since verified them by the balance-sheet now in my possession, and there is no doubt about its correctness.

4 Q. Is that statement as made, as shown by the books of the company, correct?

A. It is.

5 Q. And the separating into months was done by the information you have received in the way you have indicated?

Ans. Yes, sir.

Cross-examination by A. C. Harris, Esq.:

6 Q. Where were you when you got this dispatch?

A. At the Dennison House.

7 Q. You dispatched your book-keeper from where?

A. Some place on the Big Four; I think it was Colfax.

8 Q. Who asked you to come down here?

A. I came to file the monthly report with the master.

9 Q. Is it necessary for you to come to Ind'pl's to file that?

A. I come here and check it over.

10 Q. Who asked you about this information that you have got on this memorandum slip?

686 A. Mr. Kimball asked me to-day to make up a statement.

11 Q. What was the occasion for telegraphing?

A. In order to divide it by months.

12 Q. You say you telegraphed your clerk from Colfax?

A. I telegraphed to my book-keeper from Colfax to send me the statement divided into months.

13 Q. What did you do that for?

A. Because Mr. Kimball required it.

14 Q. When did he require it?

A. He spoke to me about it after we left Attica this morning.

15 Q. Your reports that have been made to the master from month to month show the amount of your passenger earnings?

Ans. Yes, sir.

16 Q. Then you could have got that information here without telegraphing to the book-keeper?

A. Yes; I presume we could by troubling Mr. Fishback and going through them.

And further the witness saith not.

687 Zimri Dwiggings, examined on behalf of the receiver, being first duly sworn, testified as follows:

Direct examination by R. B. F. Pierce:

1 Q. Where do you live?

A. I live at Oxford, Indiana.

2 Q. What is your business?

Ans. Banking.

3 Q. How long have you lived there?

Ans. 6 years.

4 Q. Is there any other Zimri Dwiggins over on that road?

Ans. No, sir.

5 Q. Are you acquainted with Rynearson, the Chicago and Great Southern, and Mr. Kimball, the receiver?

Ans. Yes, sir.

6 Q. I will ask you if Mr. Kimball ever stated in your presence and in Mr. Rynearson's presence, either to you or to any one else, that he did not care whether any passengers got on his train or not?

A. No, sir; he did not, to my recollection.

7 Q. I will ask you if you are an official of the Chicago and Great Southern Railway Company?

Ans. No, sir.

8 Q. Or have you any particular interest in the property?

Ans. No, sir.

9 Q. What do you know of your own knowledge about Mr. Kimball's efforts to secure business for his road—the road for which he is receiver?

688 A. Well, I can only state that in a general way, of course. After he took possession, the road did better than it ever did before. Of course, I have, with other citizens, in having a good road there. There is one instance I call to mind of his energy in the business. Mr. McConnelly was agent at our place, and he was discharged by Receiver Foster, and at his solicitation and his father's I asked Mr. Kimball to have him reinstated when he was appointed receiver. Kimball said to me: He is not live enough. The man we have there is a good deal better man than he is. He says: He has not gall enough to sweep out his office. I said to him I thought the citizens would like to have him there. His father had been quite a friend to the road, and had a great many friends, and I thought he would do a bigger business for the road than a stranger could, and that I would assist him in getting business, and so would his father; and Mr. Kimball says upon that condition that you folks will assist him to build up a business I will reinstate him on trial
689 and if he don't succeed in getting — he cannot stay, and upon that he was appointed; I went and told Mr. McConnell what Mr. Kimball had told me, and told him that if you want to stay in the office you must get business, and you must write to the farmers and cattle men and go among your friends and work it up. He says, Suppose they do not furnish a rate. I said, Notify Kimball. I said, You get the business, and if the others do not do their part it is not your fault; and he said he would make a strong effort, and he went back in — then, and I think he has been doing very well.

9 Q. I will ask you if you are acquainted with the stock men in your county—pretty generally in your neighborhood?

A. Yes, sir.

10 Q. What efforts have been made by Mr. Kimball to get their business?

A. There has been a very strong effort made through Mr. McConnell for Mr. Kimball and his father, and I assisted them too,
690 because I told Mr. Kimball that the young man, I thought, was worthy, and if he would once get started in the right road he would go all right, and he made quite an effort to get the business.

11 Q. What do you know about Mr. Kimball making an effort to accom-odate the shipping public along the line?

A. He has — an effort to do so, running a stock train on Tuesdays and Thursdays; that seems to suit them all best; I know we pay through the bank for nearly every car-load of stock that goes out to the Chicago trade, and the stock men come to our bank and I have heard the stock men say that he has got two-thirds of the stock trade that goes to Chicago. There are a great many hogs that go to Indianapolis and Buffalo, but that which goes to Chicago he has got the bulk of it. We pay for them clear up to Wyndham.

12 Q. What is the competition in this business?

A. It is very strong; he has the Lake Erie and the Big Four, and I know what the stock men have told me; the stock men have told me that his car holds two more steers than the other cars
691 do, and the rates were the same, and for that reason they had been using his train.

13 Q. What do you know about his building stock-pens and putting in scales and making an effort to secure that business?

A. At our place and also at Attica there were no stock-pens. Those two places I know personally, because I have an interest in the bank at Attica, and there were no stock-pens at Attica until he came there. At our place there were some little ones, but no scales. The other railroad company at both places had scales and good pens. He enlarged the pen at our place twice and put in scales.

14 Q. Do you know anything about his making efforts at other stations than those at Attica and Oxford?

A. Yes, sir; at Wadena he made an effort. I know that personally. I happened to be at Kimball's office—it is above our bank building—for some matter or other—I do not remember what—and he had been writing to the agent at Wadena urging him to get business, and the Wadena agent wrote him, and he showed
692 me the letter, stating that it was difficult to get passengers, for the reason that the brakemen had not acted properly with some of the lady passengers; that he would insist on sitting by the side of them, and he said, "There is a dammed pretty thing," and handed me the letter. He says, "I will knock this brakeman clear off the train;" and afterward I was at Wadena, and I knew the agent, and we were conversing together, and I asked, How are the passsengers? Did you have any more trouble? and he said no; he did not hear anything of the brakemen getting too close to the ladies after that.

15 Q. What do you know about the passenger traffic on this road since the road was opened? Has it been heavy or light?

A. From my observation it has been very light.

16 Q. During what period?

A. Ever since it was built.

17 Q. How was it before the appointment of a receiver?

Ans. It was light.

18 Q. And before those passenger trains were taken off?

Ans. It was light then.

19 Q. There was a time when they ran two trains there a day each way. How was it then?

693 A. It was light. Mr. Crawford made quite an effort. I was familiar with his management of the road and the manner of his doing business, because he was at our place there frequently, and he remarked to me one day that he had made quite an effort to build up the passenger trade, but that the passenger

trade would not pay the service for running the train, and he said it seemed as though the people were not satisfied with his operating the line.

20 Q. They were then running two passenger trains each way per day?

Ans. Yes, sir.

21 Q. From your knowledge of the road and the traveling public what would you say about the necessity of putting on fast passenger trains to run over the road?

A. Of course I could not state what it might result in. I could only give my idea of it. I do not think there would be very much through travel at the present. It does not start anywhere and leads to no place.

22 Q. So passenger travel is largely local between the points?

Ans. Yes, sir; it is largely local.

Cross-examination by A. C. Harris, Esq.:

694 23 Q. Do you do any business for the receiver in any way?

A. No, sir; nothing; except he keeps his account at the bank at Attica.

24 Q. Does he keep his account also at Oxford?

A. No, sir.

25 Q. How long has he kept his account at Attica?

A. I think shortly after he was appointed.

26 Q. Has he been keeping it there all the time?

A. Yes, sir. He has not kept all his account there, because his balance would not run over three or four thousand dollars at a time; sometimes more, sometimes less.

27 Q. Do you ride over the road between Attica and Oxford?

Ans. Twice a week.

28 Q. Do you pay fare?

Ans. No, sir.

29 Q. How do you ride?

Ans. By a pass.

30 Q. Who issued it?

A. Mr. Kimball issued it to me since he has been receiver, and the others issued it to me before.

31 Q. Who invited you to come down here?

A. Through Mr. Kimball.

32 Q. Did you pay fare on the Big Four?

Ans. I did.

33 Q. Any arrangement about reimbursing you?

A. Nothing that I know of.

34 Q. You have no agreement for compensation nor loss of time or expenses?

695 A. None, whatever. I received a telegram last night from Mr. Peirce, asking me if I remembered of Mr. Kimball making the statement that was referred to awhile ago, and I answered stating no; I happened to see Kimball, and he showed me a letter from Mr. Peirce, and asked me if I could come down, and I told him,

from the best of my recollection, that Rynearson was utterly mistaken about it.

35 Q. How long have you known Rynearson?

A. I knew him before I knew Kimball; probably four or five years.

36 Q. You do not know anything bad about the man?

Ans. No, sir.

37 Q. How long does it take you to go from Oxford to Attica on the train?

A. I leave Oxford at 2½ and I reach there about 4.10.

38 Q. What is the distance?

Ans. Eighteen miles.

39 Q. How do they put in the time on that 18 miles?

A. They do local work—work along the road; I could not tell you what they were doing, because I am not interested in how they get along.

40 Q. You pay no attention to it?

Ans. No, sir.

696 41 Q. What stations do they stop at to take on freight between Oxford and Attica?

A. Pine Village, Winthrop, and Kickapoo.

42 Q. Is there a depot at Kickapoo?

A. No, sir.

43 Q. Any passenger agent there?

Ans. I think not.

44 Q. Is there at Winthrop?

A. I think there is an agent there, but no depot.

45 Q. Have you any recollection of any freight being received or shipped from Kickapoo or Winthrop in the last sixty days, when you have been riding over there?

A. I do not know about that, whether there has or not, but I think there has. There is a store there that they throw off things to. The best of my impression is that they have been throwing off mail there and express.

46 Q. You feel perfectly safe on the road at the speed you make?

Ans. Yes, sir.

47 Q. Good track?

Ans. Yes, sir.

48 Q. Well ballasted?

Ans. Yes, sir.

49 Q. How are the fences on each side?

Ans. Good fences.

50 Q. When were they put in?

A. This last fall.

51 Q. How are the cattle-*gaurds*?

Ans. In good shape.

52 Q. Do you know of any better road in Ind'a than this road?

697 A. I do not know. I am not a judge of roads. The road looks as if it was in good condition.

53 Q. Does it ride smooth?
A. Yes, sir; it is in good condition. I would consider it so.

Re-examination by R. B. F. Pierce, Esq.:

54 Q. Mr. Harris asked you if you knew anything bad about Rynearson, and I will ask you if he is not very talkative and inclined to find fault?
A. Yes, sir; I am familiar with Rynearson, and frequently when I go on the train I go into his car and sit down, and he talks about the road a good deal. He said it seemed as though they fooled along and dilly-dallied along, and it looked as though they were doing work on a gravel train.
56 Q. He is a little inclined to criticise and find fault?
Ans. Yes, sir.

By Mr. Harris:

57 Q. He did not tell any untruth about the road, did he?
A. Not that I know of, because I did not know whether they had fooled away time or not.

By Mr. Calkins:

58 Q. Are you a director of that extension south?
Ans. No, sir.

And further witness saith not.

698 Exhibit Kimball No. 2.

Copy of Letter to All Agents.

Attica, Indiana, *May 26th*, 1885.

Dear Sir: In looking over the inward and outward business of your station for the past several months I find both passenger and freight receipts to be very light, and I cannot understand why such is the case. Your station is favorably located and should show better receipts.

I wish you to send me a list of all the merchants doing business in your town, and what kind of business, the amount of sales of each the past year, and where they buy their goods; the amount of live-stock and kind, and the number of bushels of grain and kind raised within a radius of five miles during the past year, and where it is marketed.

I want all the information you can give me on these subjects, and your own views as to the reason why this company does not get the business as against other line-; also your views as to the best way to proceed to get it. I also want you to be frank with me and to point out how and in what way I can be of assistance to you in making up the business of your station to a point where you can look with pride at the increase for the next six months as compared with the past six months.

We all have to pull together, and we must get more busi-
699 ness. This property is located through a beautiful farming and stock-raising country, and I am not at all satisfied with the amount of business shown from your station.

I am here to aid and assist you in every way possible to increase it, and shall be only too glad to place my shoulder to the wheel at any and all times when required, but at the same time I must depend upon you to keep me informed of your requirements.

As yet I have heard nothing from you, and cannot surmise the reason for this stagnation.

We must all be on the alert, and increase the business from this day forward, or show to our superiors why such a state of things exists, with a property running through one of the best farming sections of the State.

I am providing you with all that is needed at your station to facilitate business and expect to see a corresponding increase, especially in the inward and outward freight.

When our road is properly tied and ballasted, I shall place one or more passenger trains on the line, if the business will warrant it, but while this is going on, and we are running one train each way, it gives you a splendid opportunity to get out and work up business and increase our freight traffic. Let me hear from you on receipt of this, and as often as I can be of assistance to you.

Yours truly,
(Signed) GEO. C. KIMBALL, *Receiver*.

700 In the Circuit Court of the United States for the District of Indiana.

HENRY H. PORTER
vs.
THE CHICAGO AND GREAT SOUTHERN RAILWAY COMPANY *et al.*
} Bill for Foreclosure.

and Consolidated Causes.

JOHN HACK *et al.*
vs.
THE CHICAGO AND GREAT SOUTHERN RAILWAY COMPANY *et al.*
} Creditors' Bill.

Testimony taken before John Gray, special commissioner, duly appointed in said cause by order of said court, entered October 20th, 1885.

SATURDAY, *the 31st day of October, A. D.* 1885.

Present: R. B. F. Pierce, Esq., solicitor for the complainant, Henry H. Porter; Henry A. Gardner, Esq., solicitor for the defendant, The Chicago and Great Southern Railway Company; Col. John S. Cooper, Gen. I. N. Stiles, and H. Meiselbar, Esq., solicitors for Swan & Atkinson, as stockholders, and also for the Cleveland Rolling Mill Company, Fitzsimons & Connell, Wirt D. Walker, H. B.
701 Scutt & Co., Oliver Brothers & Phillips, Volney Q. Irwin, and

other judgment creditors who have filed their answers in this cause; Mr. Henry Crawford being present, at the request of Mr. Pierce.

FRED. F. LACEY, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. Please state your name, age, residence, and occupation.

A. My name is Fred. F. Lacey; residence, Omaha, Nebraska; I am employed in a bank there as bank teller at present.

Q. Where did you formerly reside?

A. In Chicago, Illinois.

Q. How long did you reside in Chicago, Illinois?

A. That has been my home until recently. I have been about four months in Omaha, Nebraska.

Q. How long had you resided in Chicago?

A. That has been my home. Previous to that I was not of age. I got my schooling here and my mother lived here.

Q. Immediately prior to the 15th of March, 1882, what was your occupation—business?

A. I was a clerk in Mr. Crawford's office.

Q. What Crawford?

A. Henry Crawford.

Q. How long had you been such?

A. Some time in the year previous. In 1880 I first went to work for Mr. Crawford.

Q. How long did you continue at work with Mr. Crawford after the 15th of March, 1882?

A. Well, I suppose that the term would apply up to the appointment of a receiver of the Chicago and Great Southern Railway.

702 Q. In this cause?

A. In this cause; yes, sir.

Q. Do you mean the appointment of a receiver that was made some time in October, 1884, by the circuit court of Jasper county, Indiana?

A. Yes, sir.

Q. Are you or not a creditor of the Chicago & Great Southern Railway Company?

A. Yes, sir.

Q. For what services or on account of what consideration does that company, as you claim, owe you?

A. For services rendered in the capacity of paymaster and clerk; the title of secretary was given to me.

Q. I will ask you to look at this book I show you, and which I introduce in evidence, the whole of it, and say what that is.

(Exhibiting book to witness.)

A. This is the record-book of the Chicago & Great Southern Railway Company.

Q. Is any part of it in your handwriting?

A. Yes, sir.

Q. What portions of it? Just designate the pages.

A. Some of it is in my handwriting, some of the pages, and some of it is not. The first I notice occurs on pages 106 to 139, inclusive.

Q. Is that all that is in your handwriting?

A. I think not; I think it is, too, from appearances.

(Witness examines book.)

A. Yes, sir.

Q. In whose handwriting is page 86?

A. It is written by Mr. Henry Crawford.

Q. In whose handwriting are pages 96 to 105, inclusive?

A. That is done by Mr. Henry Crawford.

703 Q. In whose handriting are pages 140 to 145, inclusive?

A. That is Mr. Henry Crawford's handwriting.

Q. You signed the proceedings on page 145?

A. Yes, sir.

Mr. **Pierce**: As secretary?

A. As secretary of the company; yes, sir.

Col. **Cooper**: When did you first have anything to do for Mr. Crawford with the Chicago and Great Southern Railway Company—how early a date?

A. It was either on or about the 15th of March, 1882. The record-book shows the date of the meeting at Goodland, where I was present.

Q. Were you present at the meeting at Goodland, Indiana?

A. On that date; yes, sir About page 105, I think it is.

Q. State the pages on which the record of the meeting at Goodland, Indiana, on March 15th, occurs.

A. Pages 83 to 85, inclusive.

Q. Who else was present beside yourself in the interest of Mr. Crawford?

A. They might have all been in the interest of Mr. Crawford.

Mr. **Gardner**: That is a conclusion, and is not proper.

Col. **Cooper**: Who else was present there, as far as you remember?

A. Mr. Crawford's son was present and Mr. William A. Starin.

Q. Do you know what was the occasion of the resignation of Messrs. Foster, Little, Conklin, Swan, McConnell, and others as directors, recorded in the record-book showing the proceedings of the board of directors on that day?

A. Do you want my idea of it, or my knowledge?

Q. Just what you know.

A. I know nothing.

703½ Q. Did you know anything from any conversation with Mr. Crawford, or with any of these gentlemen who were the old board of directors? Did you have any talk with them, or hear them make any explanation of the matters?

Mr. **Gardner**: Give the conversation.

A. I cannot recollect any conversation, only the fact that it was a transfer of the property.

Col. **Cooper**: I want to know whether you remember the substance of any conversation which went to explain the reason of these men's resignations; any conversation with Mr. Crawford or with these men at that time?

A. No, sir.

Q. Why they resigned?

A. It would be impossible to recall any conversation.

Q. I mean the substance of any conversation.

A. I don't recollect the substance of any conversation to that effect.

Q. Do you remember when you became secretary of the company?

A. I think it was in April, 1883; I am not positive. I cannot recall the exact date at present.

Q. Did you go down with Mr. Crawford to Goodland to that meeting of the 15th of March, 1882, in company with Mr. Crawford?

A. I have been on a good many trips with Mr. Crawford. I don't at present recall that one, exactly.

Q. Where was Mr. Crawford's office in March, 1882—do you remember?

A. It was located in the building at 123 Dearborn street.

704 Q. Do you remember about a meeting of the new board of directors that appears recorded in the record-book of the company on pages 86 to 102, inclusive, under date of March 18, 1882?

A. There were a number of meetings held around that time. I don't recollect this particular meeting.

Q. I mean the meeting at which the construction contract between Henry Crawford and the Chicago and Great Southern Railway Company was presented and approved by the board of directors—the first meeting of the new board.

A. I recollect nothing special in connection with it at all.

Q. Do you remember whether or not Henry Meiselbar was present at that meeting?

A. I do not; no, sir.

Q. Do you remember of his being present at any meeting of the board of directors of the Chicago and Great Southern Railway Company?

A. No, sir.

Q. Have you seen the stock-book of the Chicago and Great Southern Railway Company?

A. I have seen a stock-book. I suppose it is the stock-book.

Q. I will ask you what interest on the 18th of March, 1882, by way of stock, Mr. H. Crawford, Jr., had in the Chicago and Great Southern Railway Company—do you know of any interest that he had in it at that time?

A. I have no knowledge of anything of that kind, Colonel, at that time, I don't think.

Q. Since that time?

A. Since that time—you said on the 18th of March.

Q. Have you any knowledge, acquired since that time, of what interest he had at that time, on the 18th of March, 1882—at the first meeting of the new board of directors.

705 A. I supposed he had one share of stock.

Q. What interest did W. A. Starin have?

A. Under the same head—one share of stock, I suppose.

Q. Did you see the share of stock?

A. No, sir.

Q. What interest did you have in the company in the way of stock at that time?

A. I had one share, I suppose.

Q. Did you have a stock certificate for it?

A. No, sir.

Q. Had you subscribed for any stock?

A. No, sir.

Q. Then how and in what way did you have any stock of the company? Just explain what you mean by saying Mr. Starin and Mr. Henry Crawford, Jr., and yourself you supposed had one share of stock. What evidence did you see of the ownership of the shares of stock?

A. I don't remember whether it was at that time or later that I saw a transfer of one share each to the following persons (naming the directors of the Chicago and Great Southern Railway Company) signed by Mr. Henry Crawford.

Q. Have you seen such a document as that since?

A. I say I don't recollect whether it was prior or since that time.

Q. You have seen such a document?

A. I have seen such a document; yes, sir.

Q. Transferring one share of stock to each of these new directors?

A. Yes, sir.

Q. Who was Mr. William A. Starin? What was his occupation on the 15th of March, 1882?

A. He had cards for attorney, and was a clerk in Mr. Crawford's office; that is about the size of it.

706 Q. Who was D. H. Conklin, and what was his occupation on the 15th of March, 1882?

A. I think he was general superintendent of the Chicago and Great Southern railway prior to that time; he must have been at that time, as he had charge of the work.

Q. At whose instance and under whose direction?

A. Mr. Henry Crawford's.

Q. Was Conklin one of the men who had a share of stock assigned to him by Mr. Crawford?

A. I think he was.

Q. Who was Henry Moore?

A. Mr. Henry Moore is a resident of Indiana, employed by Mr. Crawford in the procuring of right of way on the old construction of the Louisville, New Albany and Chicago.

Q. What was Mr. Crawford's interest in the Louisville, New Albany and Chicago railroad, if any?

A. He was contractor.

Q. And Mr. Henry Moore was employed by him?

A. Yes, sir.

Q. You mean the Chicago and Indianapolis Air Line, don't you?

A. That is the Louisville, New Albany and Chicago, isn't it?

Q. It subsequently was transferred to the Louisville, New Albany and Chicago as part of its system.

A. Yes, sir.

Q. Who was D. J. Lyon? What was his business?

A. He was an attorney.

Q. Practicing law where?

A. He was at the office at 123 Dearborn street.

Q. Whose office?

A. Mr. Henry Crawford's office.

Q. I will ask you whether Mr. Moore and Mr. Lyon, or either of
them or both, were parties who had a share of stock assigned
707 to each of them by Henry Crawford?

A. I think they were. I haven't a definite recollection of those names.

Q. What is your best recollection as to these men's interest in the road, as to where they got their share of stock, if they had a share of stock?

A. That is where they got it if they had it.

Q. Where—from Mr. Henry Crawford by assignment?

A. Yes, sir.

Q. Made when? About what time?

A. About the 15th of March, about the time of that meeting.

Q. The 15th of March, 1882?

A. 1882; yes, sir.

Q. Who was George W. McDonald?

A. He was an attorney of Attica, Indiana.

Q. What connection did he have with the Chicago and Great Southern?

A. Well, I think he had something to do with the right of way, procuring transfers, or something of that character.

Q. For whom—in whose employ directly?

A. Mr. Henry Crawford's employ.

Q. Prior to this time?

A. I don't say as to that; I don't know. I had never met Mr. McDonald prior to that time.

Q. And what his relations were to Mr. Henry Crawford you don't know?

A. No; I have no knowledge of that.

Q. Do you know where McDonald got his share of stock?

A. That was transferred by Mr. Crawford, I am quite sure.

Q. At what time?

708 A. At the same time they were all transferred.

Q. Who was Mr. Henry Meiselbar?

A. He was an attorney.

Q. What relation did he have, if any, to the Chicago and Great Southern?

A. I don't know that he had any.

Q. Did you ever know of any share of stock being transferred to him?

A. I don't recollect; no, sir.

Q. Do you remember of his being present at any meeting of the board of directors on or after March 15, 1882?

A. I do not; no, sir.

Q. Did you ever see any stock certificates delivered to any of these parties?

A. No, sir.

Q. Who kept the general books, showing the receipt and disbursement of moneys of the Chicago and Great Southern while you were connected with it, while you had any knowledge of it?

A. Well, that was divided up in several divisions; I don't know exactly what you refer to in that question.

Q. I mean the books showing any receipt on account of stock, payments for stock subscribed.

A. I never saw any books of that character. The construction accounts are the books that I saw.

Q. Had Mr. Henry Crawford any connection with the Chicago and Great Southern prior to March 15, 1882, the time of the meeting at Goodland, Indiana?

A. That is a hard question to answer, in my limited knowledge of Mr. Crawford's connection with the business prior to that time.

Q. From what you knew generally, what, if any, connection did he have with this company prior to that time?

709 A. I supposed he contemplated purchasing the property and building the road.

Q. Did you get that from talk with Mr. Crawford?

A. I think no personal talk with Mr. Crawford at all.

Q. From what you heard Mr. Crawford say?

A. From conversation with the office; I don't recollect; I have no recollection of who made the remark.

Q. How long prior to the 15th of March, 1882, did you have any such knowledge?

A. The first recollection I have is when his son went to record the mortgage; I think he returned, or was delayed over Thanksgiving, November of the year previous, which would make it the last of November, 1881.

Q. Mr. Crawford's son is the gentleman who signs his name H. Crawford, Jr., in this record, is he?

A. Yes, sir.

Q. When you got through with the meeting down at Goodland, Indiana, and you came back to Chicago, do you know what notice was given to the new board of directors, if any, for the meeting of the 18th of March, 1882?

A. I don't recollect; no, sir.

Q. Do you recollect who were present there?

A. I do not; no, sir.

Q. Were you present?

A. I have been present at a great many meetings.

Q. Do you remember that first meeting, the first meeting of the new board, where Mr. Crawford's contract was presented; do you remember any such meeting as that, the construction contract of Mr. Crawford?

710 A. If my recollection serves me correctly, I staid in the country from the 15th of March, at that time.

Q. For how long?

A. I could not say as to that. I was there under Mr. Conklin for some time, and then we moved to Goodland, and we staid there most of that summer.

Q. Do you remember whether, after the meeting where the general resignation of the directors took place—according to this record-book, on the 15th of March, 1882—whether you came back to Chicago?

A. I did not come back at that time; no, sir.

Q. Do you know whether or not you had come back and was here by the 18th?

A. I don't know as to that.

Q. What is your best recollection about it?

A. My recollections are that we went back and forth a great many times, in and out, but we had our headquarters in the country from that time on.

Q. Do you remember being present at any meeting of the board of directors of this company where the construction contract of Mr. Crawford was presented for action of the board of directors?

A. I have no recollection of any definite action taken at any special meeting, or any of those meetings at that time; the time is considerably distant.

Q. I want to ask you this question: From the 15th of March, 1882, down to the first of January, 1885, I will ask you whatever you did in connection with the Chicago and Great Southern, either as secretary, director, or otherwise, under whose directions you acted--instructions?

711 Objected to by solicitor for the Chicago and Great Southern Railway Company.

A. Under Mr. Henry Crawford's directions.

Q. You cannot state positively, then, whether you were or were not present on the 18th of March, 1882, at the meeting of the board of directors recorded in the record-book?

A. I cannot; no, sir.

Q. I wish you would try and refresh your recollection when I tell you that the 15th of March, 1882, occurred on Wednesday, and the 18th of March on Saturday, whether or not you returned from Goodland, Indiana, that week, to be present at that meeting of the board of directors.

A. I was home either that Sunday or the Sunday following, because when I went into the country I had no expectation of staying, and had no change of clothes, or anything.

Q. Do you remember whether you came back in time to attend this meeting on Saturday, the 18th of March?

A. I have no further recollection in regard to that transaction. There were meetings held about every time I was there in the office; I don't know exactly about the special dates or times.

Q. Do you remember whether you were present at the time the mortgage was presented for approval by the board of directors—the draft of the mortgage?

A. I have no recollection of any special movements in any of the meetings.

Q. I will ask you this question: Did you or not, on or before the 18th of March, 1882, read over Mr. Crawford's construction 712 contract with the Chicago and Great Southern Railway Company?

A. No, sir; I don't think I ever saw it prior to that time.

Q. Did you see it on that day, on the 18th of March, 1882?

A. I have no recollection of seeing it that day.

Q. Do you remember whether or not you ever gave any consideration to the contents of it, the provisions of the construction contract?

A. I copied it a number of times.

Q. I don't mean that; I mean, on or before the 18th of March, had you ever given any consideration to the provisions of that construction contract?

A. No, sir.

Q. I want to ask you what consideration you, as a director of the Chicago and Great Southern Railway Company, had given to the terms of the mortgage recorded in the record-book from pages 88 to 95, inclusive, to John C. New, either on the 18th of March or prior thereto.

A. I gave it no consideration, I don't think, any more than I would anything out of curiosity.

Q. I wish you would look at the record-book from pages 106 to 118, inclusive, which I understand you to say are in your handwriting, and say from what memoranda or data you wrote that in the record-book.

A. I have no recollection now what that came from at all. That is simply my work as clerk, because it is signed by Mr. H. Crawford, Jr., as secretary, I think. "There being no further business presented, the board then adjourned. H. Crawford, Jr., secretary."

Q. Who asked you to write that in the book?

713 A. I think it was at the direction of Mr. Henry Crawford or his son.

Q. Did you or not write it from some manuscript presented to you; do you remember that?

A. Most undoubtedly; I certainly could not get up a document like that.

Q. Do you remember in whose handwriting the original of that document was?

A. No, sir.

Q. Do you know where the document is?

A. No, sir; that is giving the line of the road. It might have been in the engineer's handwriting.

Mr. **Pierce**: Is that change in the line of the road in Newton county?

A. I think so; something of that character.

Col. Cooper: When was that written? Do you remember whether it was written on the day it bears date—January 29th, 1883?

A. I could not tell that either.

Q. Where were the headquarters of the company on January 29th, 1883? I mean the Chicago and Great Southern Railway Company in Chicago.

A. I think they were at 123 Dearborn street. I don't think we moved until May to Monroe street, if I recollect correctly; May, 1883.

Q. Do you remember whether in the original the names which appear signed on page 110 of the record-book were signed in the same handwriting as the balance of the document from which you copied?

A. I have no recollection of the transaction at all, Colonel.

Q. Did you know at that time Mr. Henry Meiselbar's handwriting?

A. Yes, sir.

714 Q. Do you remember any circumstance of copying his name from an original manuscript into this book?

A. No, sir; I haven't any recollection of that. Those appear of record in the county court down there, wherever that is. That document is filed in the county court, and wherever that county is it can be found at the county seat.

Q. You say you were present at several meetings of the board of directors of this company; I want to ask you whether Mr. Henry Crawford was present at any of those meetings?

A. Yes, sir.

Q. What person, if any, present at the meeting took the lead in the matter of originating business and saying what should be done, advising, and so forth?

A. It all amounted to the same thing. It was presented by different parties there.

Q. What do you mean by saying it all amounted to the same thing?

A. That it was under the direction of Mr. Henry Crawford.

Q. What the board of directors did, you mean to say, was at the instance and direction of Mr. Henry Crawford?

A. Yes, sir.

Q. From what time to what time?

A. That is all the recollection I ever had of it.

Q. Every meeting of the board of directors?

A. As far as I recollect.

Q. From the 15th of March down?

A. Yes, sir.

Q. What fact or circumstance was there, if any, which put Mr. Crawford forward as a leading spirit and giving sole directions here as to what the board of directors should do at their meetings?

715 A. He was the owner of the road, and it was his personal business or under his direction, for his benefit.

Q. You all understand that the whole matter was for Mr. Crawford's benefit?

Objected to by solicitor for complainant.

Q. Did you understand that it was for Mr. Crawford's benefit?

Objected to by solicitor for complainant.

A. Yes, sir.

Q. How many of the board of directors were in Mr. Crawford's direct employment? I mean the new board of directors that was elected on the 15th of March, 1882. (Handing book to witness.) Just name them.

A. The first name that appears is H. Crawford, Jr. That being Mr. Crawford's son, I hardly know whether you would term it under his employ or not.

Q. Was he or not in Mr. Crawford's employment or under his direction, doing his bidding?

A. He was doing his work; I supposed it was under his directions that he did it. Mr. Starin is the next gentleman. He was working for Mr. Crawford prior to the time that I did, even in 1880.

Q. Was he or not at this time?

A. Yes, sir; I think he was. Mr. D. H. Conklin was superintendent of construction at that time.

Q. You have said he was in Mr. Crawford's employment?

A. Yes, sir. Myself. I was, I suppose, without doubt. "Mr. H. Crawford was then elected director in place of Mr. J. M. McConnell." Mr. Henry Moore's name appears next. I could not 716 say whether he was working for Mr. Crawford at that time or not. He had been connected with the air-line business for some time prior to that at least or during that time, if I recollect.

Q. Do you know whether or not he was getting up right of way for the Chicago and Great Southern at that time?

A. I think he made one visit down there. I don't know whether he did any right-of-way business or not.

Q. Go on with the list.

A. "Mr. D. J. Lyon was then elected director." I don't know as Mr. Lyon could be called in the employ of Mr. Crawford.

Q. He had an office with Mr. Crawford?

A. Yes, sir; he did small lawsuits and cases for office rents.

Q. For Mr. Crawford?

A. Yes, sir.

Q. Do you know whether part of his consideration for his office rent was his services on this board of directors?

A. I could not say that. I suppose he was to do most anything in that line that was required of him.

Q. Required of him by whom?

A. Mr. Henry Crawford. Mr. George W. McDonald, I could not speak in regard to him any further than I have already. Mr. Henry Meiselbar's name is here.

Q. What relation had Mr. Henry Meiselbar to Mr. Henry Crawford?

A. He had been a clerk and stenographer in his office.

Q. Was he at that time, do you remember?

A. Well, I could not say at that time whether he had severed his connection or not. It was during that period—either prior or after.

717 Q. Go on.

A. That is all the names I notice.

Q. To refresh your recollection about your presence at the meeting of the 18th of March, 1882, let me call your attention to a provision of the contract, as appears on the record-book at page 97, wherein, under the second paragraph of the construction contract with Mr. Crawford, it is decided that Mr. Crawford "will also in a proper and workmanlike manner grade and bridge the said railroad, lay down thereupon two thousand and six hundred and forty ties to the mile, either of oak, hemlock, cedar, or other proper wood;" whether or not you remember any discussion as to whether the ties should be of either of the kinds of timber named there; do you remember about it?

A. I don't recollect about any of those special provisions at all.

Q. I mean at that time, whether the board discussed that question amongst them?

A. I think not.

Q. It does not call to your mind whether you were present or not?

A. No, sir.

Q. Have you had any experience in railroad construction?

A. No, sir.

Q. You have not had any experience?

A. Not prior to that time.

Q. Have you had since?

A. I was down there that summer; I picked up a little of it.

Q. About the cost of materials?

A. Some, yes.

718 Q. Do you know whether there is any difference in the price of oak, hemlock, or cedar wood for ties?

A. They are about of a quality, I guess, except oak is a little better.

Q. About the cost to the contractor?

A. That depends largely on where you buy them.

Q. Delivered down on the line of that road—was there any difference in the price of those kinds of ties delivered on the line of that road in March, 1882?

A. I shall have to give that up, because you might buy oak ties on the line that were cut there cheaper than you could get hemlock ties hauled down there.

Q. The contract, on the same page, further provides that Crawford shall "lay down thereupon either iron or steel rails, to be not less than 52 pounds to the lineal yard." Do you remember about being present when that question was discussed, as to whether the road would have iron or steel rails?

A. No, sir; I have no recollection about that.

Q. Do you know whether or not at that time iron or steel rails of the same weight per yard were the more expensive?

A. I only know by my judgment at present that steel would undoubtedly be the more expensive.

Q. Do you remember about any provision in the contract wherein, in addition to the consideration which Mr. Crawford was to receive in the first-mortgage bonds and the income bonds and the shares of stock, and also all donations and subscriptions, subsidies voted, etc.,
that he was also to use the credit of the railway company in
719 the purchase of supplies for the doing of the work; do you
remember any discussion about that at any meeting?

A. No, sir.

Q. Who was J. B. Forseman?

A. He was a resident of Indiana, if I associate the name with the man I know as J. B. Forseman.

Q. He appears, on page 103 of the record, to have been elected, on the first of May, 1882, as one of the directors of this company. Do you know who he was?

A. There is a Forseman down in Indiana; I suppose it is the same one.

Q. What was his connection, if any, with this road, outside of being a director?

A. Nothing further than that the road went through his farm, I guess.

Q. Do you know whether he had any pecuniary interest in the road?

A. I think not.

Q. Do you know whether he was a stockholder?

A. I think he had a share of stock, the same as the rest of them.

Q. Where did he get it?

A. If he had one Mr. Crawford assigned it to him.

Q. I notice in this record-book, from your statement, that, on page 123 to 139, inclusive, whilst you were secretary, the proceedings are in your handwriting.

A. Yes, sir.

Q. Now, when were those written out—at the time the meeting occurred?

A. They were written at various times?

Q. Who wrote them originally, I mean; not in this book, but if there was any original minute made of them in whose handwriting
and who did it?

720 A. Now, it would be hard to tell, in a broad question like
that—the several meetings of directors—whose handwriting
they were in.

Q. Take the first meeting, then, while you were secretary, from page 123 to 130, inclusive, whether or not those were written down at the time.

Mr. Gardner: In the book, do you mean?

Col. Cooper: I asked him first whether they were written as the proceedings of the meetings took place or immediately thereafter, or whether they were written out on paper and afterwards transcribed.

A. My recollection of this meeting, the meeting on page 123 I refer to now, that is the time of the consolidation of the Chicago & Great Southern with the Chicago & Block Coal Railroad Company. I don't recollect now how those minutes were gotten up or much about it.

Q. What is your general recollection as to the minutes that you transcribed in your handwriting in the book, whether or not they were written down by you at the time of the meeting or written out on paper by you or anybody else and afterwards filled in?

A. I think I made some notes in regard to them, if I recollect correctly.

Q. Who put those notes in shape, that is what I want to know, as they are transcribed there?

A. I think they were submitted to Mr. Crawford before they were put into the book.

Q. Which Mr. Crawford, Henry?

A. Henry Crawford. This agreement here was drawn up by somebody else (indicating on record book), I think the stenographer.

721 Q. At whose dictation?

A. I could not say; I was not present.

Q. Take the proceedings at the meeting from page 131 to 139, inclusive, signed by yourself as secretary, what do you say about those proceedings, whether they were written out at the time of the meeting, as they appear in the book and written in the book, or whether a memorandum was made and they were afterwards written out *in extenso* and copied into the book?

A. That includes another article of agreement, and I don't recollect in whose handwriting it was now.

Q. Do you remember whether you wrote it out yourself?

A. I did not write it originally.

Q. Who did write it originally?

A. I could not say as to that.

Mr. Pierce: Is it the articles of consolidation?

A. Yes, sir; it is giving the articles of consolidation, April 18, 1883.

Q. Isn't it the deed of further assurance?

A. "The president presented to the meeting a draft of the deed of further assurance."

Col. Cooper: What I want to ask you is, after you became secretary of the company did you ever, of your own motion, from your recollection of the meeting and from your own minutes, write out without submitting to Mr. Henry Crawford what you were going to transcribe in your book; did you ever put it into the book?

A. No, sir.

Q. You submitted all these things to Mr. Crawford?

A. Yes, sir.

Q. Why?

A. Because it was his business. He is a good lawyer, and I
wanted to write them up in good shape. I was working for
722 Mr. Crawford; naturally I would want to do as he wanted
me.

Q. The record on pages 141 and 142, I believe you have sworn, is in Mr. Crawford's handwriting?

A. Yes, sir.

Q. And the record of the meeting, on the same pages, at Goodland, August 11, 1883, appears to be signed by yourself as secretary. Now, did you read over the record before you signed it; did you read over that record to see whether it was correct or not?

A. I don't recollect now whether I did or not. I suppose I did—that is the natural supposition.

Q. It is in Mr. Crawford's handwriting?

A. Yes, sir.

Q. Do you remember how soon after the meeting this was written up and signed?

A. No, sir.

Q. Did you see Mr. Crawford write it?

A. I think I did; I don't recollect now.

Q. Would it have made any difference whether you did or did not?

A. I don't think it would; no.

Q. You would have signed it in any event?

A. I guess I would.

Q. Why?

A. I was working for Mr. Crawford. I supposed it was his own business, and he wanted it done properly and all right.

Q. On page 143 there is pinned a letter from Mr. Crawford, as contractor, to the board of directors of the company. I wish you would read that letter over to yourself. The letter is dated February 18, 1884.

A. (Witness reads letter.)

Q. I wish you would at the same time look at the proceedings of
the meeting on the same date, as recorded in the record-book
723 from page 141 to page 145, inclusive, and say whether you
remember being present at that meeting?

A. I have no further recollection of this than any other meeting. I don't recollect whether I was or was not there. I have reason to believe that I was.

Q. That you were there?

A. Yes, sir.

Q. That was a meeting at which Mr. Crawford, in addition to a million dollars of first-mortgage bonds that he had already held, was voted two hundred thousand dollars of additional first-mortgage bonds, twelve hundred thousand dollars of income bonds, and twelve hundred thousand dollars, par value, of the common stock, full paid. Do you remember about being present when those transactions were considered by the board?

A. I think so.

Q. Do you know what consideration they received? Just tell in substance what consideration the board gave those matters.

A. It was a similar meeting to any of the rest of them there that was attended in the office by the gentlemen present.

Q. In what respect was it similar?

A. That meetings were held there in a very few minutes, and everything was in good shape and lovely.

Q. Why, if you know, did the directors at that time vote an extension of his time for the completion of the road to the first of June, 1885, and vote him these additional first-mortgage bonds, the income mortgage bonds, and the stock; why did they do it; do you know?

A. I have no knowledge.

724 Q. Why did you vote for it if you did vote for it?

A. Because he wanted it so; that is all I know.

Q. You voted for it because Mr. Crawford wanted it so; is that what you mean by that language?

A. It was Mr. Crawford's property and he was the owner of it; we were all dummies; that was all there was to it; it is not the only corporation that has had dummies in it.

Q. When did you cease your connection with the Chicago & Great Southern Railway Company?

A. I went to work for Mr. P. B. Shumway about the first of November, 1884; he was receiver of the company at that time.

Q. How long did you remain in his service?

A. Until about the middle of January, I think it was.

Q. 1885?

A. 1885; yes, sir.

Q. What did you do then?

A. I went to work for Mr. Porter.

Q. Henry H. Porter, the complainant in this suit?

A. Yes, sir.

Q. What were you doing for him? What services were you in for Mr. Shumway?

A. I forget now what I was doing; I was not doing very much of any special duty; I was around the office there.

Q. What office?

A. The office of the Chicago & Great Southern.

Q. Where had been the headquarters of the Chicago & Great Southern Railway Company while you were connected with it, either whilst it was in the hands of the receiver or before when Mr. Crawford was contractor?

725 A. The office was 123 Dearborn street and then we moved to 115 Monroe street.

Q. Was it or not in the same office with Mr. Henry Crawford?

A. He had his office there.

Q. Do you know Mr. Henry H. Porter?

A. Yes, sir.

Q. I will ask you from some time in the summer of 1884 until the latter part of the year 1884 whether you had the direct possession of this record-book or not?

A. The record-book was in the office, in the vault; I don't know whose possession it was called in; I supposed it was in mine.

Q. Did Mr. Henry Crawford have access to it?

A. Yes, sir.

Q. And you had access to it?

A. Yes, sir.

Q. Do you remember about seeing Mr. Henry H. Porter in the office of Mr. Crawford from some time in the summer of 1884 down to the latter part of December, 1884?

A. I think he was there; I don't know.

Q. Do you know whether he was there or not?

A. I would not like to say positively he was or was not there, but I could not recollect.

Q. What is your best recollection about it—as to whether during that time you saw Mr. Porter in the office of the Chicago & Great Southern or Mr. Porter's office during that period?

A. I don't recollect when the trip was made over the line with Mr. Crawford and Mr. Porter and a number of gentlemen, but after that I think they were together or around somewhere.

Q. You remember you saw them together?

A. They were together on the line; I know that.

726 Q. Do you remember whether or not Mr. Porter made any inquiries of you or any one in the office in connection with the Chicago & Great Southern about its affairs?

A. No, sir.

Q. You don't remember about that?

A. He did not make any, I don't think.

Q. Of you?

A. No, sir.

Q. Whether he did of anybody else, you don't know?

A. I could not say as to that.

Q. Do you remember whether this record-book was ever out of the office while you were there?

A. I could not answer that either; it might have been, and I would not know it.

Q. Did you have special charge of it?

A. That is supposed to be my charge.

Q. I don't care what was supposed to be; I want to know what was the fact; who had the custody of it—that is, who looked after it to see where it was?

A. It was in the common vault in the office.

Q. Was it all the time in the common vault?

A. As far as I know; I have no knowledge of its being away.

Q. Who had access to the vault?

A. Every one in the office.

Q. Who were they?

A. Mr. Lyon, Mr. Moore, Mr. Crawford, Jr., Mr. Crawford, Sr., and myself.

Q. Do you remember about any sale of Mr. Crawford's interest in this road, the bond or stock or construction contract, or whatever interest he had in it, to Mr. Porter?

A. I know he was negotiating for something of that character.

727 Q. How long did those negotiations last?

A. I was trying to recollect whether it was in the spring or summer, but I don't know; they run into a stock car down there at the beginning of it; I remember that.

Q. A stock car where?

A. On the line of the Great Southern, when Mr. Porter went over the line and was inspecting it—on a tour of inspection.

Q. Did you ever see a contract for the sale of Mr. Crawford's interest between Mr. Porter and Mr. Crawford?

A. Yes, sir.

Q. About what time did you see it?

A. I think it was about the holidays of 1884.

Q. 1884-'5?

A. Yes; the holidays there.

Q. I call your attention to that with reference to the time, when Mr. Porter went over the line of the road; was it before or after that contract?

A. He went over the road in the spring; that being December, it would naturally be after it.

Q. That is, if this was in December, 1884, he went over the road in the spring of 1884?

A. The spring or summer of 1884.

Q. Do you remember who went along over the line of the road at that time besides Mr. Porter?

A. Mr. Marshall Field was one gentlemen, I believe.

Q. Who else?

A. Mr. Keith, I recollect, I think.

Q. Which Keith—Edson Keith?

A. I don't know which Keith it was; I heard him addressed as Mr. Keith.

Q. Did you go?

728 A. I was down on the line at the time; I did not go with the party; no, sir.

Q. Who else was along, if you remember; was Mr. Henry Crawford along?

A. Yes, sir.

Q. Who else?

A. Mr. Hillard was along, too, I think.

Q. Mr. C. W. Hillard?

A. Yes, sir; the gentleman present.

Q. Either before or after the time that they went over the road, I want to ask you whether you saw Mr. Porter after you saw these gentlemen go over the road; prior to the time of this contract between Crawford and Porter?

A. Whether I saw Mr. Porter?

Q. Yes; after they went over the line of the road and before you saw this contract, about the holidays of 1884 '5.

A. I think I did

Q. Now, I want to ask you where you saw him?

A. I think he came to Mr. Crawford's office, but I don't know positively.

Q. Had you known Mr. Porter before this time?

A. No, sir.

Q. How did you come to know who he was?

A. I don't know any more than the presence of Mr. Marshall Field; he was called by name, and the conversation I heard around that Mr. Porter was there with his friends to view the road; Mr. H. H. Porter, the stockholder of the Rock Island and the First National Bank.

Q. Do you know of any parties—you need not say what you know about them, but do you know of any parties looking into the affairs of this road between the time Mr. Porter went over the line of it and the winter of 1884 '5?

729 A. Now, I don't get the drift of that question.

Q. I want to ask you whether any other parties were looking into the affairs of this road, to your knowledge, at any time during the year 1884 outside of Mr. Porter?

A. There was Mr. Walker.

Q. What Mr. Walker?

A. I have forgotten his initials; he has three of them, I think.

Q. Who is he?

A. He is a broker here, I understand.

Q. Do you know Mr. Samuel M. Nickerson?

A. I know who he is; I am not personally acquainted with him.

Q. Do you know whether he was —?

A. I could not say; I think he was there in connection with Mr. Porter in regard to the matter.

Q. Do you know whether he was in the office?

A. I don't know whether he was or not; no, sir.

Q. I will ask you whether you know whether any of the following gentlemen—Mr. Sebor, Mr. David Dows, Mr. J. M. Durand, Mr. A. J. Leoth, Robert Law, Isaac H. Wing, E. W. Winter, or E. F. Lawrence—were examining into the affairs of this company during the year 1884?

A. I don't know of any of them.

Q. You do not?

A. No, sir.

Q. I want to ask you whether your own position in the office or place or desk, and your habits about the office, were such that you would have known what parties visited Mr. Crawford with reference to this road when you were in?

A. I probably would have seen them; yes, sir.

730 Q. You don't remember about seeing any of these people?

A. No, sir.

Counsel for defendants asks counsel for complainant whether he will waive the notice for the production of the contract between Henry H. Porter and Henry Crawford, so that he can lay the foundation for the examination of this witness and the giving of secondary evidence as to its contents—that is, the contract for the sale of Mr. Crawford's interest in the Chicago & Great Southern railway.

Mr. Pierce: I am not prepared to say whether I will waive notice or not, but Mr. Porter is within reach of process of this commissioner, and the contract is in his possession, I suppose.

Col. **Cooper**: The only trouble is this witness wants to return to his business in Omaha, and I want to have the matter determined before I go on with the examination further. It is a matter of convenience for all of us.

Mr. **Pierce**: I do not imagine there will be any trouble about getting hold of that contract if you propose to examine Mr. Porter.

Mr. **Gardner**: That contract will probably be produced. I don't think there is any necessity for your proving the contents of it. I presume it will be produced when you ask for it.

Col. **Cooper**: I have no reason to doubt it at all.

Mr. **Pierce**: We will furnish you everything we have—that is, if it comes up in proper shape.

731 Col. **Cooper**: Were you or not in New York at any time when any money was paid over to Drexel, Morgan & Co.?

A. Never; no, sir.

Q. Do you know, either personally or by conversation with Mr. Porter and Mr. Crawford, whether any money was paid over under the contract or not?

A. I was present at a meeting between Mr. Crawford and Mr. Porter where Mr. Porter presented a contract to Mr. Crawford. Mr. Porter endorsed on Mr. Crawford's contract or *vice versa* the payment of the money and the transfer of the stock and bonds.

Q. What contract was that?

A. That is the Henry H. Porter syndicate contract with Henry Crawford.

Q. The contract between Porter and syndicate and Mr. Henry Crawford?

A. Between Mr Porter and syndicate and Mr. Crawford.

Q. What stock and bonds do you refer to?

A. The stock and bonds that were in the hands of Mr. Crawford, through Drexel, Morgan & Co., I suppose, to Mr. Porter.

Q. Did you hear any talk between them at that time?

A. No, sir; not much; very little conversation.

Cross-examination waived.

Signature of witness to above deposition waived by agreement of counsel.

By agreement of parties the further taking of testimony was adjourned to Wednesday, November 4th, at 10 o'clock a. m.

732 **Wednesday**, *November* 4, 1885.

Parties met pursuant to adjournment at 11 o'clock a. m.

George W. McDonald, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. **Cooper**, and testified as follows:

Q. State your name, age, occupation, and residence.

A. My name is George W. McDonald; thirty-seven years old; residence, Attica, Indiana; occupation, attorney.

Q. Do you know anything about the Chicago and Great Southern Railway Company?

A. I was connected with it at one time—from some time in 1882 to the date it passed into the hands of the receiver.

Q. What year was that?

A. October 27, 1884.

Q. How early in 1882 were you connected with the railway company?

A. Well, I had been connected with the railway company under Mr. Foster in 1881—that is, I had been doing some work for him. I was notified some time in the spring of 1882 that I had been selected as a director. I had been employed a few months previous to that by Mr. Crawford to do some work in our place.

Q. What Mr. Crawford?

A. Mr. Henry Crawford.

Q. You had been employed by Mr. Henry Crawford to do what kind of work?

733 A. To procure some rights of way from the east bank of the Wabash river to the connection with the Block Coal railroad in the city of Attica.

Q. What time was it you say you were employed by Mr. Crawford to do that work?

A. I think it was in the fall of 1881 or early in 1882—in December, 1881, or January, 1882.

Q. What connection, if any, did Mr. Crawford have with the Chicago and Great Southern Railway Company at the time when you were employed to procure these rights of way?

A. I don't know of any connection that he had then; I don't know what connection, except I looked upon him as the reputed purchaser or would-be purchaser, or something of that kind.

Q. Purchaser of what?

A. Of the Indiana and Chicago Railway Company as it was then.

Q. That was the same company that was afterwards the Chicago & Great Southern?

A. Yes, sir.

Q. I notice that your first connection with the Chicago and Great Southern Railway Company, as appears by the record-book already introduced in evidence, was on the 15th day of March, 1882, when, as recited by the record-book, on the resignation of Silas Sink as a director of the company, being presented and accepted, you were elected in his stead at a meeting reported by the record-book to have been held at Goodland, Indiana, on the 15th of March, 1882; were you present at that meeting?

A. I was not.

Q. How soon after that meeting did you get notice that you were a director?

734 A. But a short time after that—a few days; D. H. Conklin, who was then the general superintendent, informed me that I had been selected as a director, and a few days following that I met Henry Crawford, by his request, at the Lafayette Junction, and rode with him to the La Salle-street depot. He informed

me at that time that I had been selected as a director, and detailing me for some work that he desired I should do.

Q. Do you know whether it was as early as the 18th of March you were informed of your election?

A. I do not. It was but a few days after the selection that Mr. Conklin came down there.

Q. Do you remember what day of the week it was that Mr. Conklin came down—whether it was in the early part of the week or the latter part of the week?

A. I think it was the latter part of the week.

Q. Did you get any notice of the meeting of the board of directors to be held at Chicago on the 18th of March, 1882?

A. I did not.

Q. Were you or not present at a meeting held in Chicago of the board of directors on the 18th of March, 1882?

A. I was not.

Q. You say you were not notified of the meeting?

A. I was not notified; no, sir.

Mr. Gardner: Don't you want to correct that a little and say you never received notice?

A. I never received any notice; that is what I intend by my answer.

735 Col. Cooper: Were you present at a meeting of the stockholders of the company on the first of May, 1882, at Goodland, Indiana?

A. I was not.

Q. The records recite that you were elected director at that time, did you subsequently receive notice, on that day or subsequently, that you were elected such director?

A. I did not; I never received but one notification that I had been elected a director.

Q. When was that?

A. That was the first time; I was notified then, as I have already stated.

Q. The only time you ever received any notice you were elected a director was the time you have mentioned?

A. That is all.

Q. The notification given to you by Mr. Conklin and also by Mr. Crawford?

A. Yes, sir.

Q. The record recites on page 105, under date of May 1, 1882, that there was a regular meeting of the board of directors that day elected, held at the company's office in Goodland at 3 o'clock p. m., and that you were present; do you remember such a meeting?

A. I do not.

Q. Were you present?

A. I was not.

Q. Were you present at a meeting of the stockholders held on the 10th of March, 1883, at Attica, Indiana—a special called meeting of the stockholders?

A. I was.

Q. The record recites that on the 7th of May, 1883, there was a stockholders' meeting of the company held at Goodland, May 7, 1883; were you present at that stockholders' meeting?

736 A. I was not.

Q. The record recites that on the 11th of August, 1883, *that* you were present at a meeting of the board of directors convened at the office of the company at one o'clock p. m., at Goodland, Indiana. Were you present at that meeting?

A. I was not.

Q. The record recites that on the 18th of February, 1884, there was a meeting of the board of directors held at the office of the company in Chicago, and that you were present. Were you present?

A. I was present.

Q. At that meeting?

A. I was; yes, sir.

Q. There is attached to page 143, containing a record of that meeting of the board of directors, a letter from Henry Crawford, as contractor. I wish you would look at that letter and see whether you have ever seen it before.

(Witness examines letter.)

A. Yes, sir.

Q. Where did you first see that letter or report?

A. The letter was handed to me in an envelope with another letter of instructions by Mr. Crawford, in Chicago.

Q. When?

A. On the morning of the 18th of February, 1884.

Q. Before or after the meeting?

A. Before the meeting.

Q. This letter or report of Mr. Crawford, as contractor, was handed to you, together with a letter of instructions. What do you mean by letter of instructions?

A. A letter of instructions as to what was to be done that 737 day by the board that was to be called together that morning, for which purpose I had come up to Chicago.

Q. Who sent you word to come to Chicago?

A. I got a telegram from the office. I don't remember whether it was Mr. Crawford himself or Mr. Lacey. I don't remember exactly.

Q. Did or did not the board carry out the letter of instructions of Mr. Crawford?

Objected to by solicitors for complainant. Question waived.

Q. What did you do with that letter of instructions?

A. I took the letter of instructions, and when the meeting was called to order—we had some trouble in getting the meeting to order, at first we were unable to get a quorum of the directors together—and the letter, together with a letter of Mr. Crawford, was handed to some member of the board, I don't remember who, and it was before the board; I don't think the report was ever read fully that morning.

Mr. Pierce: What report do you mean?

A. That letter.

Col. COOPER: The letter of Crawford?

A. This letter here. (Indicating letter attached to record book.)

Q. The letter that is in the record book?

A. Yes, sir.

Q. Fastened to page 143?

A. Yes, sir.

Q. That was not read?

A. I don't think it was.

Q. Just state who were present at the meeting.

A. Henry Crawford, Jr., F. F. Lacey, C. S. Worden, Elijah Moore, Jr., and myself.

738 Q. You say you had some trouble in getting a quorum. What was that trouble?

A. We left the office and went to the office of D. J. Lyon, who was at that time a director, and a justice of the peace here; he was engaged in holding court.

Q. Where; in Chicago?

A. Yes, sir; and we asked him for a few moment's conversation, and Mr. Lacey and myself approached him, and we told him the object of our coming.

Q. What did you tell him the object of your coming there was?

A. We told him we wanted to hold a meeting of the board of directors, and it would not take but a few minutes; we had a matter that wanted attention; and he then said he could not act, because he had some claims against the company, and had either sued or expected to; at least he had some claims against the company that prevented his acting in that capacity; he would not act so any more. We then went back to the office.

Q. What office?

A. To 115 Monroe street—the railway office—and on my way into the room it occurred to some of us—I don't remember who—to make Mr. Moore a director.

Q. What Mr. Moore?

A. Elijah Moore, Jr.; he was made director by common consent, and we went in and the meeting was called to order.

Q. What was the form gone through to elect Mr. Moore a director?

A. We found we were without a quorum in Chicago, and someone suggested: "Here is Mr. Moore; let us make him a director." We had knowledge at that time that Mr. Lyon would not
739 act; why not make Moore a director? And the directors
then present consented, and we called Mr. Moore into the counsels to participate.

Q. Do you know whether or not Moore had been a director before that time?

A. I do not think he had been, from the action that morning. He thought it was a little premature, and seemed to hesitate a moment as to whether it would be all right or not; at least I thought from his manner that he hadn't any knowledge of it.

Q. Did you or not know whether he was a director before?

A. I didn't know that he was a director before at all; I thought I knew the full board.

Q. Did you know what the full board of directors was as appeared by the record?

A. I thought I did.

Q. Who was it at that time?

A. Henry Crawford, Sr., Henry Crawford, Jr., F. F. Lacey, Henry Meiselbar, D. J. Lyon, J. B. Forseman, C. S. Worden, and myself.

Q. How about Starin?

A. And William A. Starin.

Q. How did you find out all those were directors?

A. I only gathered the information from talk I had with the others, members of the board, as to who they were.

Q. Did you ever see any announcement of it in the public prints, or otherwise?

A. I got the announcement of the first board of directors in a paper from Indianapolis, and I don't remember to have seen the announcement of any of the subsequent boards.

740 Q. The record recites that at a meeting at Goodland, August 11, 1883, William A. Starin resigned as vice-president and as a member of the board of directors, which resignation was, on motion, accepted, and Mr. E. Moore, Jr., was elected as director in his stead; I would like to ask you to look at that record and see whether that appears to have be changed—that is, the name of E. Moore.

A. There has evidently been an erasure, and Mr. Moore's name inserted.

Q. Does it bear evidence of being scratched out?

A. Yes, sir.

Q. The original name that was written in there?

A. Yes, sir.

Solicitor for complainants objected to the question and the answer.

Q. Do you know whether any stock was issued to Mr. Moore at that meeting or not?

A. There was not.

Q. Was there any assignment of any stock to Moore?

A. There was not at that time; do you mean the meeting in Goodland?

Q. No, no; the meeting at which you were present.

A. No, sir.

Q. February 18, 1884?

A. There was no stock issued to him at that time by that meeting. The only thing done or transacted at the meeting of that morning was a motion to receive the contract and extend the time of the contract to Mr. Crawford.

Q. To what time?

A. To February, 1885—June, 1885, I think, if I recollect
741 rightly; I don't remember; the data that was gained was

gained principally from the letter of instructions that was attached to the letter.

Q. How long was the meeting in session?

A. About ten minutes.

Q. You say this report or letter of Mr. Crawford's attached to page 143 of the record-book was not read to the meeting?

A. No, sir; the letter was directed to me; the other letter.

Q. I am speaking about this letter.

A. No, sir; that was not read. The letter of instructions containing it was read. It was directed to me, and that was read, and this report of the contractor was merely held up to the view of the directors, and the motion made that was necessary.

Q. In whose handwriting was that letter of instructions?

A. Henry Crawford's.

Q. Whose signature was attached to it?

A. Henry Crawford's, I think.

Q. Are you acquainted with Henry Crawford's handwriting?

A. Yes, sir.

Q. In whose handwriting is the letter or report attached to the record-book, at page 143?

A. Henry Crawford's.

Q. In whose handwriting was the record of the minutes of the meeting of February 18, 1884?

A. Henry Crawford's, I should think; it looks similar to the letter.

Q. Did you have any information from any engineer as to whether the statements contained in Mr. Crawford's letter or report as
742 to what he had done in the matter of constructing the road was true?

A. I did not.

Q. Did you know yourself whether it was true or not?

A. I supposed that I had a knowledge—a pretty fair knowledge—of the state or condition of the railway at that time.

Q. Was the matter discussed as to whether the matter was true?

A. It was not discussed.

Q. As to whether the report of Mr. Crawford was true?

A. It was not discussed; it was something he wanted done, and we arranged it.

Q. About the matter of extending his contract to June 1, 1885, why was that done, if you know?

A. Because he desired it.

Q. Why and on what account did you pay him the two hundred thousand dollars additional first-mortgage bonds?

A. That was a part of the request, I think, contained in the letter.

Q. Why did you vote it—simply because he asked it?

A. Simply because he asked it.

Q. Why did you do that?

A. Why, as the property belonged to him, I did not know why he should not control it. I supposed that whatever he wanted done in the matter was for his own interest, and we acted in accordance with that wish.

Q. How was it with regard to issuing one million two hundred thousand dollars of income bonds—your voting them to him?

A. They were voted; the only question concerning the matter at all that was made in the letter of instructions that followed this was that the amounts——

743 Solicitor for complainants objected to the witness saying anything about the contents of that letter.

A. The amounts bore the evidence of an erasure, and it was hard to distinguish between the figures "2" and "3," and we merely discussed as to whether it was a 2 or 3.

Q. What was two or three?

A. A million two hundred thousand or a million three hundred thousand.

Q. Of what—income mortgage bonds or stock?

A. Income mortgage bonds.

Q. Why did you vote that? What was the consideration?

A. Mr. Crawford had desired it, and we supposed it was for his own benefit, or he would not ask it.

Q. How was it with regard to the common stock—$1,200,000, full paid?

A. Whatever was asked by Mr. Crawford.

Mr. Pierce: We object. That is not an answer to the question.

The Witness: I am going to answer the question generally, Mr. Pierce.

Mr. Pierce: I want to insist on an answer to the question.

A. Because Mr. Crawford desired it, and we supposed he would not desire anything that was not for his own benefit; that is all. It was his matter—not ours. We were his creatures, and did as he asked.

Q. You were what?

A. We were the creatures he selected to do the work, and we did just as he desired.

Col. Cooper: I see Mr. Crawford, in his letter, asks that $1,200,000 of the stock be voted to him, but in your resolution you say 744 that it was to be $1,200,000, and the common stock, full paid, of this company. How was it that you put in the stock as full paid in your resolution when he did not ask it in this report?

A. I cannot say as to that; the resolution was not written out upon which these minutes had been drawn; the matter was discussed that way, orally, most of us standing. We were not but a few minutes, and the record was made up after the meeting some time in accordance with the letter of instructions that was attached to the report of the directors.

Q. The letter of instructions to you?

A. Yes, sir; they were both handed by me to the secretary of the company.

Q. Do you know whether or not this report was made up in accordance with what you directors did that day?

A. I do not. I have not a clear recollection of the reading of the letter of instructions. I paid very little attention to it, except that we were to get the amounts right and to go through the form merely of receiving and taking care of this matter, and trusted to the making up of the record from the letter of instructions, as it contained what was desired.

Q. Desired by whom?

A. Mr. Crawford.

Q. Were you present at a meeting of the stockholders of the company on the 5th of May, 1884, held at Goodland, Indiana?

A. I was not.

Q. Did you get any notice?

A. I did not.

Q. Did you ever get any notice of a stockholders' meeting?

A. I never received a notice of any meeting except the
745 notice that was published for the meeting that was held in
Attica of the stockholders for the consolidation, approving the consolidation of the Great Southern and the Block Coal Railroad Company, held the 10th of March, 1883.

Q. That is the only notice, either as a stockholder or director, that you ever received, except this one for the 18th?

A. Yes, sir; and that was by way of telegram, I think.

Counsel for defendants desired to ask the witness about the contents of a letter of instructions of Mr. Crawford to the witness of the 18th of February, 1884, and if the original is not produced or accounted for under the rules of evidence this part of the examination may go out of the record.

Q. I will ask you, as near as you can remember, to state the contents of that letter of instructions of Mr. Crawford to you.

Mr. Gardner: Do you ask for the production of the letter of instructions?

Col. Cooper: Yes.

Mr. Gardner: Who do you ask for it?

Col. Cooper: I do not ask for it now; I say I will. If I do not fill that breach this will be incompetent evidence. He is on the stand and I want to ask him about it.

Q. Mr. McDonald, as I understand you, you say in your evidence that you turned that letter, along with the report or letter attached to the record book, over to some member of the board of directors?

746 A. I folded the letter up and with the report I handed
them to Mr. Lacey, the secretary. They were both together when they came to me, and when we finished looking at them I handed them to Mr. Lacey, the secretary.

Q. Do you know where they are now?

A. I do not; I have never seen either of them since until now.

Q. Now, I will ask you as to the contents of that letter of instructions. What was its general tenor and purport?

Objected to by solicitors for complainants.

A. The general tenor of the letters—I don't know that I could give the contents of the letter at all; it has been some time since I saw it, but my recollection of the general tenor and its contents is that Mr. Crawford as counsel——

Mr. GARDNER: Do you ask for the general tenor of the letter?
Col. COOPER: Give the substance of it.

A. That is what I am attempting to give now.

Objected to by solicitor for complainants.

A. Mr. Crawford was making a report of his doings as contractor and asking an extension of time and wanting something done or performed by the board of directors towards issuing stock and bonds, and one thing and another, by the directors. That letter contained instructions to the board as to how to proceed, what to do. If I recollect rightly, it was directed to me; it was handed to me, surely, and by me handed to the meeting; but it was directed to me; I think if the letter is found it will be found directed to me in
the beginning, but they were both attached together when they
747 came to me—that is, they were in the same handwriting, and
handed together at the same time, and both written by the
same hand.

Q. What did Mr. Crawford say to you when he handed the letters to you?

A. He said very little to me, except to hand me the letter, knowing I had come up for the purpose of participating in the meeting of some kind; I suppose he knew what I was there for.

Q. Where was Mr. Crawford while this meeting was being held?

A. I think he was in his office.

Q. Where was his office, as compared with the other?

A. His office was the corner room on Monroe street, fronting Monroe street, and his son's was the next room, fronting on Monroe, and Mr. Monroe's office was the next room, fronting on Monroe.

Q. Which Moore?

A. E. Moore, Jr.

Q. Where was this meeting held?

A. This meeting was held either in Mr. Moore's office or Henry Crawford, Jr.'s, office—Henry Crawford, Jr.'s office, I think; that is the office next to his father's.

Q. Were these rooms all together and in one suite?

A. No; the rooms were off from each other—doors, of course, opening from one room to the other.

Q. That is what I mean.

A. Yes; you could pass through the offices.

Q. They had one common entrance, did they not, into all the offices?

A. Yes, sir.

Q. Under date of May 5, 1884, at Goodland, Indiana, there
748 appears on page 145 of record of a meeting of the board of
the company at which you appear to have been present.
Were you present at that date?

A. I was not.

Q. On page 146, under date of March 31, 1885, there appears to have been a meeting of the board of directors, at which you are reported to have been present. Were you present at that meeting?

A. I was present.

Q. At that meeting?

A. Yes, sir.

Q. In whose handwriting are the records of the two meetings, May 5th, 1884—the stockholders' and directors' meetings?

A. I should say they were in the handwriting of Mr. Henry Crawford.

Q. What connection did Mr. Henry Crawford have with the Chicago and Great Southern Railway Company from some time in March ,1882, down to the time of the appointment of the receiver, in October, 1884?

A. I supposed from the meeting in March——

Mr. **Pierce**: We don't want any guesses about this.

A. When I have finished my answer there will be no guesses about it. I say I supposed from the meeting in March to December, 1882, that Mr. Crawford was president of the railroad. At that time I received a letter from him stating that he was contractor. The letter was written to me in order that I might make a defense in the case of Henry Fry against the Chicago and Great Southern Railway Company, alleging that Mr. Crawford had done certain things as president.

749 Col. **Cooper**: Why did you suppose he was president of the company?

A. Because I understood at the first meeting at Chicago that he was elected president, and I never had heard of any change; I didn't know of any.

Q. Along the line of the road down there in the country whose road was it called, as to the ownership of that road?

Objected to by solicitors for complainant.

A. It was called Henry Crawford's road. The work was all done in the name of the railway company, and he was supposed to be or reputed to be the owner of it generally through the country.

Q. How generally?

A. Among the people that bordered along the line of the road through which it passes—every one that knew anything about the road.

Q. Did you ever know Mr. Crawford from the 18th of March down to the 7th of May, 1883, to sign any papers as president of the company?

A. I don't remember that I do.

Q. Where were these additional two hundred thousand dollars of first-mortgage bonds on the 18th of February, 1884, when you voted them to Mr. Crawford?

A. I could not say; I never saw them.

Q. How long did you continue director?

A. I continued a director from the first election up to—the last

meeting I attended was the 31st of March of this year. I received
a letter from the secretary, Mr. Lacey, at one time asking me to re-
sign, but I refused to comply with his request, and paid
750 no attention to the matter. That was a short time before—
some time before the meeting in March, 1883.

Q. Have you a share of stock in the company?

A. Mr. Crawford informed me on the railway between Lafayette Junction and La Salle-street depot that he had assigned me one share of stock, but I never have seen it that I know of.

Q. You never had a share of stock?

A. I never had one that I could look at.

Q. You never had one in your possession?

A. I never had one in my possession.

Q. You never had a certificate representing a share of stock?

A. Not that I know of; I don't remember to have seen one.

Q. Did you ever see the stock-books of the company?

A. I did not.

Q. Where were the headquarters of the company in Indiana, say from the 15th of March down to the time of the appointment of a receiver?

A. The headquarters for a time were at Goodland, but it was afterwards at Attica.

Q. Did you ever see Henry H. Porter down along the line of the road?

A. I believe he went through with Mr. Crawford and some other gentlemen at one time; but I don't recollect to have any more than seen him through the window of the car.

Q. How did they go through—on a regular train or special train?

A. They went through on a special train.

Q. Where were you when you saw them?

A. I was some place about the depot, I believe; I don't
751 remember whether I saw them going or coming.

Q. About the depot where?

A. In Attica.

Q. About what time was this?

A. I don't remember the time and I should not recall the circumstance except I made an inquiry as to who the gentleman was that was with Mr. Crawford, and received the answer that it was Mr. Porter and Mr. Field and some others.

Q. Do you remember about what year it was?

A. I do not. I think it was in the spring of 1884, however.

Q. The spring of 1884?

A. Yes, sir. I have no data by which I could recall the date.

Q. I will ask you whether you ever looked over the construction contract of Mr. Crawford.

A. I never saw the original construction contract and never looked over the record of it until since I have been here this week.

Q. This present week?

A. This present week.

Q. Did you see a copy of it?

A. I saw a reputed copy of it at Kentland. I don't remember the date. That was the first time I ever saw a copy or ever knew anything of the construction contract, beyond the intimation contained in the letter of December 10th, 1882, I think, that Mr. Crawford wrote me, and to which I have referred in my testimony.

Q. Was the road completed when these gentlemen went over the line and passed through Attica—Mr. Porter and Mr. Crawford and the other gentlemen.

A. I believe the road was completed so that they were running trains.

752 Q. At that time?

A. Yes, sir. I think they came from the north.

Q. Was there any work done after that time on the road?

A. I think there was work done after that time upon the road.

Q. Under whose orders?

A. I could not say.

Q. I mean by whom—by the contractor?

A. By the company, I presume; by the parties in charge of the railway.

Q. What parties?

A. Mr. Crawford and the parties in charge of the railway. There was nothing further, I think, than the aligning up and surfacing and ballasting; something of that kind. I don't think there was anything much done after that.

Cross-examination by Mr. PIERCE:

Q. Mr. McDonald, you had no talk with Mr. Crawford or Mr. Conklin or anybody else about becoming a member of the board of directors until after you were elected?

A. I did not; I didn't know it until after I was elected, and I was then informed by Mr. Conklin, who came to my office one morning and told me what had been done some days before.

Q. He told you you had been elected a few days before?

A. Yes, sir.

Q. And then a few days after that you met Mr. Crawford on the train?

A. A few days after that—I don't remember how long—Mr. 753 Crawford telegraphed me from Indianapolis to meet him, and then he informed me.

Q. He told you you had been elected a member of the board of directors and that he had transferred one share of stock to your name?

A. I think that was some time in the April following, or possibly in May. It was just prior to the time I began to ship ties for him north.

Q. You say you never have seen that share of stock?

A. Not to my knowledge.

Q. You never have?

A. Not to my knowledge. I saw two or three papers which were handed me in the car one morning about the size of that (indicating), just a blank piece of paper, as far as I could see; I did not turn it over, and I was requested to write my name across the back of it.

Q. What was that paper; do you know?

A. I don't know; I didn't turn it over; I didn't look at it at all.

Q. Who gave it to you?

A. Mr. Crawford. I don't know whether Mr. Crawford did or whether Lacey did by Crawford's direction; some one in the office.

Q. He asked you to write your name upon the back?

A. Yes, sir.

Q. Have you any idea what that paper was?

A. I have not; I didn't look at it; I have often wished since that I did.

Q. You have no idea what it was?

A. I have not.

Q. They told you to write your name on it and you wrote it?

A. Yes, sir.

754 Q. Do you say during your connection with the board in these various matters that came up for action you never acted on your own judgment about anything at all?

A. I did not; I hadn't any judgment in the matter; Mr. Crawford was in charge of the matter, and it was his business, and whatever he thought was for his interest was all right, as far as I was concerned.

Q. As you said before, you were acting as a mere creature?

A. Yes, sir; a creature of his creation.

Q. You permitted yourself to be used in that way?

A. I was acting, as I thought then, in his interest and for him, and whatever he wanted done I was perfectly willing to do, provided he wanted it done.

Q. It was your understanding he owned the property?

A. Yes, sir; I had no other idea.

Q. It was your understanding he owned all the stock of the company?

A. I had no understanding as to how much he owned, except he owned the greater part of it.

Q. That he owned the property?

A. Yes, sir.

Q. And was simply dealing with it himself?

A. Yes, sir.

Q. Do you know who the stockholders were?

A. No; I do not, beyond a few of us who had shares of stock each, to constitute a board.

Q. Do you know how much stock had been issued at the time you were elected a director?

A. I do not.

Q. You don't know anything about it at all?

A. I do not.

755 Redirect examination by Col. COOPER:

Q. What was represented to you by Mr. Lacy or Mr. Crawford on the car that day that that paper was? What did they want you to sign it for?

A. There were were no representations made to me. It was taken from the bottom of a piece of legal cap, or from a piece of legal cap—I don't know that it was from the bottom exactly—and it was handred to me, and they just said, "Mr. Crawford wants you to write your name across that," and I sat down and did so—on the papers—and my recollection is Mr. Lacy took them, or who ever handed them took them. I didn't look at them, and saw nothing on them except my name that I had written.

Q. Were you in the car at that time?

A. Yes, sir.

Q. Traveling with them?

A. No, sir; the car was at Attica at that time.

Q. And you got aboard?

A. Yes, sir; I was in the habit of going backwards and forwards through the car when it was there.

Q. Were Mr. Crawford and Mr. Lacy there in the car?

A. I don't remember which one of them it was that handed the papers to me, and I wrote my name across it and left it there.

Q. Did you have plenty of time?

A. Yes, sir; they were just passing through.

Q. Had the train stopped there?

756 A. I don't recollect whether the train had stopped there or the car had been there several days; as to that I don't remember.

Mr. PIERCE: Did you sign it in pencil or in ink?

A. I signed it in ink, I think.

The signature of the witness to the above deposition is waived by consent of counsel.

757 T. C. ANNABELL, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. State your name, occupation, and residence.

A. My name is Timon C. Annabell; attorney-at-law; I reside at Goodland, Indiana, at present.

Q. Do you know anything about the Chicago & Great Southern Railway Company?

A. Yes, sir; somewhat. I know there is such a company as that.

Q. Were you ever connected with it in any way?

A. Yes, sir.

Q. What way?

A. As attorney.

Q. How long?

A. Well, I was connected with the Indiana & Chicago railway, whose name was afterwards changed to the Chicago & Great Southern Railway Company by resolution of the board of directors. I was connected with that road from its organization—after the articles of organization were written—up to within a short time since.

Q. Then, after the change, you were connected with the Chicago & Great Southern Railway Company up to a short time ago?

A. Yes, sir; I have continued right along.

Q. From the 15th of March, 1882, down to the time the receiver of the company was appointed, in October, 1884, from what person or persons did you receive instructions on the part of the railway company, as its attorney? Who was the person who gave directions to you as representing the railway company?

758 A. Well, whenever I received any instructions at all it was mostly from Henry Crawford; sometimes his son would offer some suggestions.

Q. Henry Crawford, Jr.?

A. Yes, sir.

Q. In what capacity; in what relation to the property did Henry Crawford give you instructions?

A. He was—as president of the company.

Q. What other relation did he have to the property besides that—that is, in what relation did he give you instructions?

A. Why, he claimed to be contrator at that time.

Q. At what time?

A. Well, from——

Q. At the time I mention?

A. Shortly after that time up to the time of the appointment of the receiver.

Q. Contractor and president, both?

A. Yes, sir.

Q. The record-book shows that William H. Starin was for a time the president of the company, namely, from the 18th of March, 1882, until some time in 1883. During that interval did you have anything to do with Mr. Starin as president, receiving orders from him and directions?

A. My recollection is that I did not have any.

Q. During that time who gave you directions on behalf of the company?

A. If I received any from any person from the 15th day of March up to what time, do you say?

Q. From the 18th of March, 1882, down to May, 1883?

A. It is possible I may have received a letter perhaps from Mr.
Starin during that time, but I have no recollection of ever
759 receiving anything from him in relation to the matter;
everything that was done about that it was done by Mr. Crawford.

Q. He was the boss, was he?

A. So considered.

Q. Did he so act?

A. I think he did.

Q. Was he or not during the time from the 18th of March down to the time of the appointment of the receiver frequently along the line of the road?

A. Well, I hardly know whether he was frequently along; he was along a good many times, but sometimes not so frequent, and then again he would come down for two or three weeks, perhaps we would see him, and he would be along when I would not see him.

Q. When the road was not called by its corporate name, whose road was it called along its line among the people down there?

Which question was objected to by solicitors for complainants.

Q. It was not called a railroad generally; when it was not called by its corporate name——

Mr. **Pierce**: It was called Foster's road, wasn't it?

Col. **Cooper**: I want to know whether or not it was generally reputed——

A. It was generally reputed to be Crawford's road.

Q. Were you ever present at a meeting of the board of directors after the 15th of March, 1882, on or after that date?

A. Not after that date.

Q. Were you present at a meeting of the board of directors on the 15th of March, 1882?

A. I was.

760 Q. Were you present in the room where the meeting occurred?

A. The meeting of the board?

Q. Yes.

A. Yes, sir.

Q. Do you remember anything that took place there?

A. Yes, sir; I have a recollection of some things.

Q. Go on and state as far as you can what took place there.

A. The board was called together by Mr. Foster, who was the president; he stated that he had sold out his stock to Mr. Crawford—his interest; the other gentlemen could do as they had a mind to about it; there was some objection raised, and Mr. Foster went out and he came back and brought Mr. Crawford with him; there was a considerable of a fracas gotten up there by myself and some other parties on the board; the result was that Mr. Foster resigned and Mr. Henry Crawford was elected in his stead.

Q. In what capacity did Mr. Foster resign?

A. As director and president. Mr. Crawford was elected director and president at that meeting; whether he was elected president at the time he was elected director or not, now, I do not remember, but it was at that same meeting, and after an adjournment of the board—we went and got supper in the meantime—after that the balance of the board resigned, one at a time, that were present, and other parties were elected in their stead.

Q. Did Mr. Z. F. Little resign?

A. I think he did; yes, sir.

Q. Did Mr. Spoor resign?

A. Yes, sir.

Q. Did Mr. J. W. Swan resign?

A. Yes, sir.

761 Q. Did Mr. J. M. McConnell resign?

A. Yes, sir; J. M. McConnell resigned.

Q. Did George Harvey resign as vice-president?

A. He resigned as director; I don't know whether he resigned as vice-president or not; I presume that would carry it.

Q. Did Mr. Henry Crawford take charge during the meeting?

A. He did; yes, sir.

Q. You say George Harvey resigned as director?

A. Yes, sir.

Q. Did John B. Forsman resign?

A. John B. Forsman was not there.

Q. Was his resignation presented?

A. I did not see any resignation presented, although Mr. Crawford said that he had his resignation; it was not presented to the board.

Q. Did Silas Sink resign?

A. He was not present either.

Q. Was his resignation, in writing, presented?

A. I did not seen anything of that kind; I don't think it was.

Q. Did Mr. R. G. Odle resign?

A. R. G. Odle was not there to take any action whatever.

Q. And there was no resignation of Mr. Odle presented?

A. If my recollection serves me right, there was no resignation presented of any party who was not present, although Mr. Crawford stated that he had agreements that they would resign, or that he had their resignations or agreements that they would resign.

Q. He had agreements from them that they would resign?

A. He so stated.

Mr. Pierce: Who said that?

A. Mr. Henry Crawford.

762 Col. Cooper: He stated to the meeting?

A. Yes, sir.

Q. You say there was some fracas there. What do you mean by that?

A. Well, John Gordon and myself, I think it was, we made an objection to the transfer of that stock—$50,000 of stock.

Q. From whom?

A. From Mr. Foster to Mr. Crawford, claiming that he had an interest in that stock, and that Foster had no right to transfer it to the directors, and Mr. Foster had no right to resign and put Mr. Crawford in possession of the company.

Q. The transfer of the stock did not transfer the board of directors, did it; how was that?

A. It left some of the board of directors without any stock by the transfer of that stock.

Q. Was there any general agreement between these people who were there and who resigned and Mr. Crawford, that you knew about, as to why they resigned, on what account they all resigned at that time, Foster and all the rest of them that did resign?

A. There was no general agreement entered into there that night. There was no statement about any general agreement. I understood there had been an agreement between Foster and Crawford, before that time, that they should resign.

Q. For what purpose?

A. For the purpose of putting Mr. Crawford in possession.

Solicitor for defendants objected to the answer.

Q. For the purpose of putting Mr. Crawford in possession of what?

763 A. Of the railroad and its property.

Q. Do you know anything about the execution of the mortgage of the Chicago & Great Southern Railway Company, the one in controversy in this suit, the first one, to John C. New?

A. I think that is the only mortgage that was ever executed. The board provided for the execution of a mortgage before that time, but afterwards rescinded that order and passed another order, under which this mortgage was executed.

Q. Do you know about when that was executed?

A. I can't say that I can give the date, but it seems to me it must have been along about October or November, in the summer or fall of 1881.

Q. Do you know whether it was after Mr. Crawford had made his arrangement with Mr. Foster to buy out Foster's stock?

A. Yes, sir; it was after that time.

Q. Do you know who drew the mortgage?

A. I don't know, as a matter of fact, who drew the mortgage. All I know is that the mortgage was sent there by Mr. Crawford.

Q. Henry Crawford?

A. Henry Crawford.

Q. Sent where?

A. To Goodland.

Q. For what purpose?

A. For the purpose of being executed by the board of directors.

Q. By the board of directors or officers?

A. There was an order sent along, I think, at the same time. Perhaps the order for the execution of the mortgage was entered before the mortgage was brought down there. At all events, I saw the mortgage there, and I think it was executed. I think 764 the mortgage was signed there. I don't think any of the bonds were signed there. I may be mistaken as to the place.

Q. Do you remember in whose handwriting the mortgage was?

A. No; I do't know that I do. The fact of it is I am rather inclined to think it was a printed blank.

Q. A printed mortgage?

A. That is my recollection about it.

Q. Have you a distinct recollection about Mr. Crawford sending it down there to be executed?

A. I think I remember that; it is possible the mortgage itself was never sent there until after it was executed, but there was an order sent down there to be entered up by the board providing for the execution of a mortgage.

Q. Who sent that order down?

A. It was sent down by Mr. Crawford.

Q. Henry Crawford?

A. Yes, sir.

Q. The record recites under date of July 14th, 1881, on pages 76 and following, of the record book: "Resolved, that the order passed on the 7th day of June, 1881, by the board of directors at their meeting of that date, authorizing the issue of bonds secured by deed of trust or mortgage upon the property of said company to the amount of ten thousand dollars per mile for superstructure and the power and authority thereby conferred upon the executive committee in relation thereto be, and the same is hereby, annulled and cancelled, and said executive committee are hereby directed to take no further steps in the matter."

765 The following resolution was adopted: "Resolved, that for the purpose of borrowing money to construct," and so forth.

A. That is in my handwriting.

Q. Now, who furnished the minutes from which that record was made up?

A. My impression is that the minutes were furnished by Mr. Crawford; that is, the form.

Q. Of the resolution?

A. Of the resolution.

Q. For that meeting at the 14th of July, 1881?

A. Yes, sir; that is my impression about it; it has been some time ago; I might be mistaken about that, but that is my best impression.

Q. Do you know why Mr. Crawford was taking an interest in the matter at that time—at as early a date as July, 1881?

A. On account of having made this contract with Mr. Foster for the purpose of this stock—the $50,000 of stock which he had contracted with Mr. Foster to purchase.

Q. Were you present at a meeting of the board of directors held on the 7th of February, 1882, at Goodland, wherein it is recited as follows: "The president submitted a proposed contract drawn by H. Crawford relative to his acting as contractor for the Chicago & Great Southern Railway Company, which, after having been duly read and considered, was unanimously rejected." Do you remember being present at that meeting?

A. I cannot say that I was present at that meeting. I don't remember whether I was present at that meeting or not. I know that contract had been rejected by that board, but I don't
766 now remember whether I was present.

Q. Did you see the contract that was presented?

A. Yes, sir.

Q. Who presented it, if you know?

A. To this board?

Q. Yes.

A. I cannot say that I was present at that meeting of the board.

Q. But you saw the contract?

A. Yes, sir; I saw the contract.

Q. I will ask you to look at the document now handed you and say whether that is the contract or not.

A. (Witness examines contract.) I think this is the contract referred to in that record; my recollection about this contract is that it was sent down to Goodland by Henry Crawford some time before February; I think about the time this bond was made, or soon after.

Q. What bond?

A. The bond here in suit.

Q. The mortgage?

A. Yes, sir; the mortgage.

[Q.] ——?

A. About the time the mortgage was authorized, or the time the mortgage was executed. That is my recollection—about the time that I first saw this contract; I know it was some time—at least my best impression is—some time before February I saw it; it was there among the papers of the railroad company for some little time before there was any record made of the contract upon the record-book.

Q. You were the attorney of the railway company at that time, were you not?

A. Yes, sir.

Q. Did you or not give any directions to the railway company, through its board of directors, or any advice in reference to it? 767

A. I cannot say about that now; I can't remember; it had been talked over, and it was generally understood it would not be executed.

Q. Why?

A. It was considered by the directors as a contract that they ought not to enter into with any person, and such a contract as Mr. Crawford was not entitled to receive at their hands.

Q. On what account?

A. They considered it an unfair contract as against the company or the balance of the stockholders.

Q. What stockholders?

A. Any of the other stockholders there might be of the company. There was some few other stockholders who had not disposed of their stock, and then there was stock for right of way provided for—contracted for; there was stock supposed to be taken by the townships who had voted aid for the company. The directors, in talking over this matter—what little talk I had with them—they considered this about that contract—that it was virtually passing the entire road over to Mr. Crawford without regard to any other interest there might be in it.

Solicitor for defendants offered in evidence the contract referred to, as Exhibit B, which contract was as follows, to wit:

"This agreement, made this —— day of October, A. D. 1881, between Henry Crawford, the party of the first part, of Chicago, Illinois, and the Chicago & Great Southern railway, a corpo- 768 ration organized under the laws of the State of Indiana, the party of the second part, witnesseth:

That for and in consideration of the payments and covenants of the party of the second part, as hereinafter set forth, the party of the first — hereby agrees to procure the right of way for, construct, and equip the northern division of the railway of the party of the second part, extending from a junction with the Louisville, New Albany & Chicago railway, about nine miles northwest of Rensselaer, and thence southwardly through the counties of Jasper, Newton, Benton, Warren, Fountain, Parke, and Clay to Brazil, Indiana, in accordance with the terms and specifications hereinafter set out—that is to say, the said party of the first part agrees—

First. To procure and complete right of way of sufficient width over and upon the entire said route for the line of railway, and also sufficient and suitable grounds for sidings, depots, shops, switch-yards, turn-table, water-tanks, and other appendages ordinarily needed by a railway.

Second. That he will also agree, in a proper and workmanlike manner, to lay down two thousand six hundred and forty ties to the mile either of oak, hemlock, or cedar, and lay down thereupon either iron or steel rails, to be not less than fifty-two pounds to the linear yard, and securely fasten the same by fish-plates, four bolts to each joint, and thoroughly spike down the rails over the entire length of line; and will also procure and put down all of
769 the necessary crossing-frogs, turn-outs, switch-stands, and appurtenances necessary to complete the line ready for business; all such graduations, track-laying, ties, and rails to be of first-class quality and construction, and the whole work to be done in a workmanlike and proper manner, and the road to be surfaced with a smooth and proper surface, and all necessary and proper bridges and cattle-guards to be placed along the line.

Third. The party of the first part will also erect all such necessary depots, shops, turn-tables, and stock-pens as may be necessary and proper for the handling of such business as may be offered to the said line on its completion, and he will also put in proper sidings at convenients points to enable the business of the line to be handled with economy and dispatch. Said party of the first part shall also put upon said road proper equipment, engines, passenger and freight cars.

Fourth. He will also erect on the right of way, alongside of the road, a line of telegraph, and procure the same to be properly wired, and have instruments placed in sufficient depots along the line of said road to afford proper telegraph facilities for the general public and also for the handling of traffic over and upon the said road.

The party of the first part agrees that the said work shall be begun immediately and be prosecuted in such a manner that the same will be entirely completed by the first day of June, 1883.

770 Provided, That if any injunctions or nuforeseen circumstances or bad weather or failure of contractors delays the ultimate completion of the line, that the said party of the first part

may have the contract time for completion sufficiently extended to meet any such unexpected delays.

And in consideration of the above promises on the part of the party of the first part, the said party of the second part hereby agrees, as an agreed compensation for the value of such work, material, labor, and the procuring of the right of way as aforesaid, to pay to the party of the first part—

First. All donations of stock, right of way, lands, labor, or money that have been hitherto or hereafter may at any time be acquired by the said party of the second part in its own name or for its use, behoof, or benefit.

Second. The party of the second part further agrees that it will at once procure to be issued two million dollars of six per cent. gold bonds, which shall be secured by a mortgage which shall be the first lien upon the northern division of the railway of the party of the second part, together with all its appurtenances, equipments, contract rights, coal lands, and franchises of every description, and also tolls to be had and levied thereon.

Third. The party of the second part will also pay fifteen hundred thousand dollars in its preferred stock, which shall constitute the entire issue thereof, which shall bear and be authorized to draw
771 six per cent. interest on dividends per annum, which shall be payable for each and every year after the issue thereof out of the net revenue of the road after the payment of interest upon the bonded obligations and the expenses of operating the property, taxes, necessary repairs, and renewals, and if the revenue for any one year shall not be sufficient to pay off such agreed six per cent. dividends on such preferred stock, then the arrearages are to accumulate and all arrears thus accruing on the fifteen hundred thousand dollars of preferred stock shall be fully paid, with interest calculated at six per cent. per annum from the issue of said stock, before any dividend shall be paid on any of the common stock of the party of the second part.

It is further agreed that the payments of bonds and stock are to made by the party of the second part to the party of the first part in proportion from time to time as the work progresses, and that the party of the first part shall be entitled to demand and have a full settlement on each and every five miles of completed track laid by him at the rate of fifteen thousand dollars for each such mile of main track laid by him in said first-mortgage bonds, and also ten thousand dollars in such preferred stock per mile of main track.

It is further agreed that the said party of the first part is to have full possession and control of each and every part of said line until the entire completion thereof up to the date aforesaid.

772 It is further agreed that the said party of the second part is, from time to time, to advance, to and for the use of the party of the first part, its promissory notes, for the purpose of obtaining means to pay for the material and labor to be used on said line, but said promissory notes are to be paid by the party of the first part, and the said party of the second part is to be protected forever against any liability or cost thereon.

It is further agreed that if the said party of the second part, at any time before the completion of said northern division, decides to extend its line southwardly from Brazil, in that case said party of the first part shall have the right to construct and equip such extension, and shall receive the same amount and character of payment and compensation as is hereinbefore set out for each mile of main track—that is to say, twenty thousand dollars per mile in first-mortgage six-per-cent. bonds and fifteen thousand dollars per mile in six-per-cent. preferred stock, and all the donations that the said party of the second part may procure upon the said southern division."

773 Cross-examination by Mr. PIERCE:

Q. Mr. Annabell, your connection with this company began with the organization of the original company, did it?

A. Yes, sir; the organization of the Indiana & Chicago Railway Company—which name was afterwards changed to the Chicago & Great Southern.

Q. And has continued right along down to the present time?

A. Well, down to within the last two or three months, say.

Q. At the time this meeting was held, on the 15th of March, 1882, how much of the road had been built, do you know?

A. On the 15th of March, 1882, there had been—I think the iron was laid from Oxford to some little distance north of Goodland—a short distance north of Goodland, or to Goodland, you might say.

Q. Who had been doing the work?

A. There had been some other work done between Oxford and Attica in the way of grading.

Q. Who had done all the work up to that time?

A. The work first done was done under the contract with John Gordon from the Iroquois river to Oxford—that is, part of that work had been done.

Q. Had Mr. Crawford done any work up to that time?

A. Up to the 15th of March?

Q. Yes—1882.

A. He furnished the money for some work up to that time.

774 Q. Do you know how much money he had furnished?

A. No, sir; I do not.

Q. Have you any idea?

A. Well, I could not tell anything about the amount of money; no, sir; I have some idea, but then it would be guess work.

Q. Were you familiar with the terms of the contract under which he was constructing the road after that time?

A. No, sir.

Q. You say you frequently got instructions from him?

A. Yes, sir.

Q. Was it as contractor or as president of the company?

A. It is pretty difficult to say.

Q. He was building the road, wasn't he?

A. He was not actively engaged in doing any work himself; it was all separate.

Q. He was building the road as contractor of the company, was he not?

A. He claimed to be; I never saw the contract, you must understand.

Q. You understood he was?

A. I understood he was building it as contractor.

Q. You understood he had sublet the work to sub-contractors, didn't you?

A. I understood that the work from Oxford to Attica had been let by—or a point just near Oxford to Attica had been let to Volney Q. Irwin before Mr. Crawford's contract.

Q. Before Mr. Crawford's contract?

A. Yes, sir.

Q. Don't you know Mr. Irwin did all that work as sub-contractor under Mr. Crawford?

A. No, sir.

775 Q. Don't you know that Mr. Crawford was charged with procuring rights of way, and, in fact, managing the whole business of the company during its construction?

A. I know that he did manage the whole business.

Q. You know that he did?

A. Yes, sir.

Q. Were you familiar with the contract under which he was building the road?

A. Mr. Crawford?

Q. Yes.

A. No, sir; I never saw it.

Q. You never saw the contract?

A. No; I have never seen—yes, I have seen the contract, but I never had seen it at that time.

Q. Not until recently?

A. Not until some time afterwards.

Q. Don't you know, as a matter of fact, that he was building that road as contractor of the railroad company?

A. I know that he always claimed that such was the case.

Q. That was your understanding?

A. Yes, sir; that was the understanding I had of it.

Q. Then, did you get your instructions from him as president of the company or as the contractor of the company?

A. Well, he didn't say to me, "I am Henry Crawford, the contractor; I am Henry Crawford, president, and I instruct you so and so," or anything of the kind.

Q. He simply came along and gave instructions for whatever was necessary to be done?

A. Yes, sir.

Q. What were your duties chiefly in regard to right of way and matters of that kind?

776 A. Right of way and anything that came along pertaining to the business.

Q. Anything pertaining to the general construction of the road and the business of the road where it was being constructed?

A. Yes, sir.

Q. You never were present at any directors' meeting after the 15th of March, 1882?

A. No, sir.

Q. That is the last meeting you attended?

A. The last one I was present at.

Q. Did Mr. Crawford ever give you any instructions as president of the company?

A. It seems to me I have had some letters from him where he signed his name as president.

Q. When? At what time?

A. Well, from the 15th day of January.

Q. Of what year?

A. Up to the fall of 1884.

Q. The 15th of January until the fall of 1884?

A. The 15th of January, 1882, until the fall of 1884. It seems to me I have received letters from him where he signed his name as president.

Q. At what time—do you remember any definite time?

A. No; I cannot give any definite time or date.

Q. Did you receive any instructions from him during the year 1882 as president?

A. I think I did, on the 15th day of March, 1882.

Q. What were they?

A. He wanted me to go to Kentland and there to look after some matters that night after the meeting adjourned. I was long there with him.

Q. That was in talk with him, was it not?

A. Yes, sir.

777 Q. That was after you had made that construction contract?

A. Who made it?

Q. Was that before or after you had made the construction contract?

A. There had been no construction contract entered into by the board of directors at that time.

Q. Was he engaged at that time in building the road?

A. Yes, sir; as much as he has been at any time since, I think.

Q. What were the instructions he gave you?

A. I don't remember now what they were, but it was to go up there in relation to some matter. I forget now what the matter was.

Q. Some matter affecting the road, was it?

A. Yes, sir.

Q. Was it a right-of-way matter?

A. I don't remember what it was, but it was in relation to something; I don't remember what it was.

Q. Is that the only time you can remember his giving any instructions of that kind?

A. I have no recollection of his saying he gave me instructions—

"I instruct you as president so and so; I instruct you as contractor so and so."

Q. What were his relations to the company at that time?

A. Henry Crawford's?

Q. Yes.

A. Well, he had just been elected director and president of the company.

Q. He had been on that day?

A. Yes, sir. They had gone through [the] form of doing it on that day.

Q. Did he have any other relation to the company, do you know?

A. He had been furnishing some means to construct the
778 road previous to that time.

Q. He was a creditor of the road then, wasn't he?

A. I cannot say about that.

Q. You know he had been furnishing money, don't you?

A. Yes, sir.

Q. Do you know how much?

A. No, sir; I cannot say how much.

Q. Did he ever give you any instructions after that time as president?

A. Mr. Pierce, I tell you I can't say whether he instructed me as president. He didn't say he instructed me as president, or that he instructed me as contractor, or anything of the kind.

Q. You can't say you ever received a single letter from him signed by him as president of the Chicago & Great Southern railway, or any instructions from him as president?

A. I think I have.

Q. When?

A. Well, I cannot tell you. I don't know that I ever received one signed by him as contractor. I don't think I ever did.

Q. You have received instructions from him signed simply Henry Crawford, haven't you?

A. Yes, sir.

Q. Plenty of them?

A. Well, not so very numerous; no.

Q. Isn't that the way you usually got your instructions from him, or letters from him signed simply Henry Crawford?

A. Mostly, whenever I would get any letters from Henry Crawford it would be in answer to something or other I would be writing to him, or something or other that he wanted done or attended to; he would write me so and so.

779 Q. He usually signed them Henry Crawford?

A. That is my impression. He usually signed them Henry Crawford.

Redirect examinaiion by Col. COOPER:

Q. During this period from the time the old board of directors went out and the new board came in did you find it necessary to do things in the name of the company where the company as a corporation was interested, outside of matters of the contractor?

A. I never acted in any other way except for the company and in the company's name, with the exception of one or two suits which were brought in the name of Henry Crawford.

Q. Where you were acting for the company in the name of the company from whom did you get instructions as to what the company should do?

A. From Henry Crawford, after the 15th of January.

Q. After the 15th of March, 1882?

A. When I got any instructions it was from Henry Crawford or through his son, or sometimes Mr. Worden, who was the general agent.

Q. As to the matter of receiving instructions for the railroad company, to act for the railroad company, to do so and so for the railroad company, and in its name, did you ever notice any difference as to Mr. Crawford's management and control of the railroad company after May 7, 1883, than prior to that time, and after the old board of directors went out?

780 A. I don't know that I ever noticed any particular difference. It was all about the same, as far as I could see.

Q. The truth of the matter is, is it not, Mr. Annabell, I will ask you, as cross-examination, that whatever Mr. Crawford said during this whole period from the time the old board of directors went out until the concern went into the hands of the receiver, whatever Mr. Crawford directed and said, either in the way of making contracts to build the road or in the way of directing what the company should do in its action down there as a corporation, Mr. Crawford was the one who had the say — the direction?

Objected to by solicitor for complainants.

A. Yes, sir.

Q. In defending and prosecuting cases where they were brought by and in the name of the railway company or against the railway company, from whom did you get instructions during this entire period from the time of the resignation of the old board of directors on the 15th of March, 1882, down to the time the company went into the hands of a receiver, in October, 1884?

A. My instructions came from Henry Crawford.

Q. You have been asked on cross-examination about a Gorden contract; what was that contract?

A. That was a contract whereby the company let the grading of the road from the Iroquois river to Oxford, in Benton county; from the Iroquois river, in Newton county, to Oxford, in Benton, to John Gorden.

Q. About what distance?

A. About 25 or 26 miles.

781 Q. Was that man still at work on the 18th of March, 1882?

A. No, sir; I don't think he ever did any work on that contract after the 23rd day of June or 25th day of June, 1883.

Q. Had he given it up and abandoned it?

A. Well, I don't know as to that.

Recross-examination by Mr. PIERCE:

Q. I will ask you if every bit of business you transacted for the railway company down there concerning which you got instructions, as you say, from Mr. Crawford did not relate to the construction and building of the railroad?

A. To the construction and building of the railroad?

Q. Yes; didn't it in some [way] grow out—wasn't it connected directly with, or growing directly out of, the construction of the railroad?

A. Well, there was such things as getting right of way, depot grounds, aid at certain points for depot grounds, stations, and so forth. Ontario is one instance I remember of especially; I suppose they might be considered as growing out of the construction of the road.

Q. Your business generally was with reference to the construction of the road; wasn't it exclusively; wasn't your whole business down there relating to the construction of the railroad?

A. It was certainly the construction of the road, pertaining to the suits against the company, or suits that the company might bring; they didn't bring very many; they had a few, however.

782 Q. You say your business did relate exclusively, then, to matters of that kind?

A. I think it did.

Col. COOPER: You say part of it was attending to the getting of rights of way?

A. Yes, sir.

Q. Now, did you or not in getting right of way pledge the railroad company in cases to issue stock for the right of way under the direction of Mr. Crawford?

A. My impression is that after Mr. Crawford came in that there were no pledges to issue stock for right of way. I think Mr. Crawford was opposed to the issuing of stock for the right of way.

Q. Did you give any obligations of the railroad company and promises of the railroad company for right of way or other things?

A. I did, before Mr. Crawford came in.

Q. Did you afterwards?

A. Did I give any obligations?

Q. Any obligation of the railroad company. Was anything done in the name of the railroad company by you under Mr. Crawford's direction after Mr. Crawford came in?

A. Everything that I did down there was done in the name of the railway company—everything with the exception of one or two suits which were brought in Mr. Crawford's name, where there was some property replevined that had been levied upon as a debt against the railroad company; the business was all carried on in the name of the railway company down there.

Q. Do you know anything about the consolidation of the Block Coal Railroad Company? Did you have anything to do with that, or did you do anything under Mr. Crawford's direction about

783 the consolidation with the Block Coal Railroad Company?

A. No, sir.
Q. You did not have anything to do with that?
A. Not a thing.

The signature of the witness to the above deposition is waived by agreement of counsel.

Counsel for defendants requests counsel for complainant to bring in at the afternoon session the contract between Mr. Porter and Mr. Crawford for the purchase of the road, the stock-books of the company, the shares of stock issued, unless the stock-books will show when the stock was issued, and the old shares of stock, the fifty or sixty thousand dollars that Mr. Crawford bought.

At this point a recess was taken to 2.30 o'clock p. m. this day.

Parties reassembled at 2 o'clock p. m.

Mr. PIERCE: I produce the only contract between Mr. Porter and Mr. Crawford that we have; but it is not such a contract as you described.

Col. COOPER: Any paper you produce for me shall be treated as though I called for it under *subpœna duces tecum.*

784 WILLIAM FOSTER, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. State your name, age, occupation, and residence.
A. My name is William Foster; age, seventy-two; residence, Goodland, Indiana; I am retired from railroading, and attending to property interests is all I am doing at present.
Q. How long have you resided in Goodland, Indiana?
A. Twenty years. Out of that twenty perhaps there is two or three years I was nominally residing at Logansport, but that has been my home; my property interests are there.
Q. Were you ever connected with the Chicago and Great Southern Railway Company and, prior to the time the property was given that name, with the Indiana and Chicago Railway Company?
A. Yes, sir.
Q. When did your connection commence with the Chicago and Indiana Railway Company?
A. 1880; in the early part of the year 1880.
Q. From the time of the organization of the company?
A. Yes, sir; I organized the company.
Q. You organized the company?
A. Yes, sir.
Q. How long did your connection with that company and the successor company, The Chicago and Great Southern Railway Company, continue?
A. To March 15th, 1882.
Q. During that period, from 1880, at the organization of
785 the company, to the 15th of March, 1882, what connection did you have with the company officially?
A. I was president of the company.

Q. And director?

A. And director.

Q. What interest did you have in the company?

A. I had originally fifty thousand — of stock of the original subscriptions.

Q. How many shares?

A. A thousand shares, and I acquired in the course of the business for salary and expenses paid out a hundred shares more.

Q. Then the par value of the stock which you owned in the company in all was how much?

A. It was $60,250.

Q. Of $50 each?

A. Of $50 each.

Q. That would make how many shares?

A. It would make 1,205 shares.

Q. How long did you hold that 1,205 shares?

A. I parted with $50,000 of it on the 23rd of June, 1881.

Q. To whom?

A. To Henry Crawford, of Chicago.

Q. Under any contract with Mr. Crawford?

A. Yes, sir.

Q. Have you got that contract?

A. Yes, sir.

Q. Will you produce it?

(Witness produces paper.)

A. It is simply selling the stock and a provision in regard to payment. It was signed in duplicate. Mr. Crawford, I suppose, retained one.

Solicitor for defendant offered in evidence the paper produced by witness, which is marked "Exhibit C," and is as follows:

786 Solicitor for complainant objected to the introduction of the document as immaterial and incompetent.

"This agreement, made this 23rd day of June, A. D. 1881, between William Foster, in behalf of himself and associates, of Goodland, Newton county, Indiana, as party of the first part, and Henry Crawford, of Chicago, Illinois, party of the second part, witnesseth:

That the party of the first part, in behalf of himself and associates, hereby sells and assigns to the said party of the second part the following certificates of stock and the shares thereby represented in the Indiana and Chicago Railway Co., to wit, certificates from 3 to 17, both inclusive, making the total number of shares of stock hereby transferred, being 1,005 shares of the par value of $50,250; and as a condition of sale of this stock the said party of the first part hereby expressly covenants and agrees that the said certificates of stock and the shares hereby transferred comprise the entire amount of stock of said corporation that has been actually issued, with the exception of ten thousand dollars thereof that has been issued to the party of the first part.

And said party of the first part further guarantees that the said Indiana and Chicago Railway Company is under no pending obligations to issue any stock except as aforesaid, except in connection with and as payment for the procuring of certain rights of
787 way, which said last-named stock liability will not exceed the sum of —.

The said party of the first part further agrees that the said Indiana and Chicago Railway Company and the said stock hereby transferred to the party of the second part is to be free and clear of all debts, liens, judgments, mortgages, liabilities, or incembrances of any kind or character except as aforesaid.

And the said party of the first part further agrees that upon the second payment, hereinafter mentioned, the present board of directors are at the request of the party of the second part to resign their several places.

And it is further agreed that any and all pending construction contracts between the said railway company and all third parties shall be cancelled and the said contracts released tc the said railway company without any costs, loss, liability, or expense either to it or to the party of the second part herein.

In consideration of the premises the party of the second part, on the conditions aforesaid, purchases the said shares of stock as evidenced by the said certificates from the party of the first part and his associates, and agrees to pay therefor the sum of nineteen thousand (19,000) dollars, as follows: $5,000 cash on the execution of these presents, $5,000 within ten days from the date hereof, and the remaining $9,000.00 within thirty days from the date hereof,
788 during which time the said party of the second part shall have opportunity to make examination to determine the situation of the property of said railway Co. and liens, contracts, rights of way, and the nature of any incumbrances thereon.

It is further agreed that the said stock certificates hereby purchased shall be this day deposited with the First National Bank of Chicago, Ill., to be held by it in escrow until the full payment of the purchase-money herein.

WILLIAM FOSTER,
HENRY CRAWFORD."

Q. At the time this contract of June 23, 1881, was entered into were the stock certificates referred to in the contract, representing $50,250, par value, transferred to Mr. Crawford?

A. Yes, sir; that is, they were turned over to him and transferred by delivery. under the terms provided there, to be held in escrow until they were afterwards delivered and assigned. One of them I had omitted signing upon the back of it, and it was signed on the 15th of March.

Q. 1882?

A. 1882; otherwise they were signed.

Q. You say something about their being in escrow; what do you mean by that?

A. It was provided there that Mr. Crawford was to pay me a certain amount of money, and the stock was to be held, and was held by Mr. Crawford and his friends, some way until he come down, and we arranged fully a settlement on the 15th of March.

789 Solicitor for complainant produces certain stock certificates in answer to the request of solicitor for defendants.

Solicitor for defendants offered in evidence twelve certificates of stock, numbered from 1 to 12 inclusive, calling each for 100 shares of stock of the par value of $5,000. The following is a copy of one of said certificates, with the endorsements thereon, all being substantially alike:

"$5,000.00 No. 1.

"*Indiana & Chicago Railway Company Stock Certificate.*

"This is to certify that William Foster, or his assignee herein, is entitled to one hundred shares, of fifty dollars each, of the capital stock of the Indiana & Chicago Railway Company on the surrender of this certificate to the secretary of this company.

"Witness the corporate seal and —.

"WILLIAM FOSTER, *Pres.*
"Z. T. LITTLE, *Sec.*

"Approved.
"Goodland, Ind., May 11, 1881.

"GEORGE HARDY,
"*Chairman Executive Committee.*"

Endorsed on back as follows:

"Know all men by these presents that I, William Foster, for value received, have bargained, sold, assigned, and transferred, and by these presents do sell, assign and transfer, to —— —— the within one hundred shares of stock of the Indiana & Chicago Railway Company, standing in my name in the books of said company; and I do hereby constitute and appoint —— ——, as my true and lawful attorney, irrevocable for me and in my name, to make any and all necessary transfers on the books of said company. 790

Witness my hand and seal this — day ——, A. D. 1881.

WILLIAM FOSTER. [SEAL.]

Witness:
H. CRAWFORD."

Solicitor for defendants also offered in evidence stock certificates numbered 13, 14, 15, 16, and 17, each for one share of fifty dollars, said certificates being all of the same tenor and effect, except that they were originally issued to William Foster, George Hardy, Silas Sink, John Swan, Richard D. Odele, and Jasper N. McConnell, a copy of one of which said certificates, with the endorsement thereon, is as follows:

$50. No. 13.

Indiana & Chicago Railway Company Stock Certificate.

791 This is to certify that George Hardy, or his assignee herein, is entitled to one share of fifty dollars each of the capital stock of the Indiana & Chicago Railway Company on the surrender of this certificate to the secretary of this company.

Witness the corporate seal and —.

WILLIAM FOSTER, *Pres.*
Z. T. LITTLE, *Sec.*

Approved.
Goodland, Ind., June 22, 1881.

GEORGE HARDY,
Chairman Executive Committee.

Endorsed on back as follows:

"For value received, I hereby assign the within share of stock to Henry Crawford.

"June 22, 1882. GEORGE HARDY.
"Witness:
"F. F. LACEY."

Q. Were these seventeen certificates that have been introduced in evidence, all aggregating 1,005 shares, turned over to Mr. Crawford on the 23rd of June?

A. No, sir; $50,250 was turned over on the 23d of June, and 10,000 on the 15th of March.

Q. What year?

A. 1882; the other the 23rd of June, 1881.

Q. Were the ten thousand dollars par value of stock that was turned over to Mr. Crawford on the 15th of March, 1882, turned over to him in pursuance of any written contract entered into between you and him?

A. Yes, sir.

Q. Have you got that contract?

A. I have.

Q. Please produce it.

A. (Witness produces paper.)

792 Q. When was this last agreement you have presented, bearing date March 15, 1882, actually executed?

A. It was executed on that day.

Q. Where?

A. At Goodland.

Q. Was it before or after the meeting of the board of directors which occurred that day?

A. Before.

Solicitor for defendants offered in evidence the agreement produced by witness, which is marked "Exhibit B," and is as follows, to wit:

"This agreement witnesseth: That Henry Crawford hereby purchases from William Foster ten thousand dollars (par value) of the stock of the Indiana & Chicago Railway Company, now known as the Chicago & Great Southern Railway Company, and evidenced by stock certificates Nos. 1 & 2, which certificates are now delivered to said Crawford; and said Foster further agrees to assign and transfer, and procure to be assigned and transferred, the following further stock subscriptions to the said railway company, all which subscriptions are unpaid and are accepted by said Crawford subject to all future payment and assessments, and forever agrees to hold each and every one of said original subscribers harmless from any and all further payments thereon, such stock being as follows:

William Foster	$800
M. L. Humston	250
S. C. Spoor	150
C. W. Hartley	200
793 Blake Wilson	200
Parker Bros.	50
Z. T. Little	200
J. B. Forseman	200
T. C. Annabal	500
J. H. Taylor	90
N. T. Dike	50
Jasper Shear	100
	$2,790

And said Foster further agrees to make no charge at any time hereafter for services or expenses of any kind against the said Chicago & Great Southern Railway Company for any transaction prior to this date. And he further agrees to make no charge of any kind for use or rent of grades prior to this date.

And in consideration of the transfer of said ten thousand dollars of issued stock and of such $2,790.00 of unpaid stock subscriptions, and as further full compensation to said Foster for all his services and expenses as an officer of or in behalf of the Chicago & Great Southern Railway Company, and as further full compensation and adjustment of any rent for or use of the grading machine belonging to said Foster and others, the said Crawford agrees to pay the said Foster the sum of ten thousand dollars in six months
794 from the date hereof, and to issue his promissory notes therefor to evidence such agreed payment.

It is further agreed that on the execution of these papers the present board of directors of the railway company are to resign, and their places are to be filled with such persons as said Crawford shall designate.

Witness our hands and seals this 15th day of March, 1882.

HENRY CRAWFORD. [SEAL.]
WILLIAM FOSTER." [SEAL.]

795 Q. Was the consideration, being the note of Mr. Crawford referred to in this last document, executed that day?

A. Yes, sir.

Q. Before or after the meeting of the board of directors?

A. Before.

Q. From the 23rd of June, 1881, until the 15th of March, 1882, what connection, if any, did Mr. Crawford have with the railroad company?

A. He stood as the capitalist of the company, buying material, sent it upon the road, and providing a certain amount of money for the grading.

Q. Under an arrangement with whom?

A. With me.

Q. You were the president?

A. With me and my board of directors.

Q. He was furnishing the money?

A. He was furnishing the money; yes, sir.

Q. How long did that arrangement continue?

A. Until the 15th of March, 1882.

Q. What change was made then?

A. An absolute change by the resignation of the directors, myself and the other directors, and a new board organized.

Q. In accordance with what arrangement, if any, were the resignations of those members of the board of directors made on the 15th of March?

A. In accordance with an implied or expressed agreement made on the 23rd of June previous.

Q. In what respect?

796 A. That Mr. Crawford having purchased the stock, or willing to purchase all the stock, my directors and myself agreed to resign, give him the control of the property.

Q. How about the board of directors?

A. They were in the agreement.

Q. That he was to have the control of the property and of the board of directors?

A. No, sir; he did not have it under the board of directors. We remained in charge of the property up to the point that he wanted it.

Q. What did say, if anything, about wanting that control on the 15th of March?

A. He said he wanted it.

Q. Whom did he tell that to?

A. To me and to my directors—my codirectors.

Q. What did he say, if anything, about having control of the board of directors?

A. He asked to have the agreement carried out and all their resignations, as they were small stockholders; and at first he wanted me to remain and retain my $10,000 of stock, and we did not agree upon that, and I made him an offer that if he took the stock I would resign and that my board of directors would, as they had no desire to remain without I remained.

Q. And in pursuance of that, this agreement, which has been introduced in evidence of the 15th of March, was entered into?

A. Yes, sir.

Q. I notice that by the record-book on page 81, at a meeting of the board of directors held on the 7th of February, 1882, at Goodland, Indiana, there was presented to the board by yourself 797 as president a contract, drawn by H. Crawford, relative to his acting as contractor for the Chicago and Southern Railroad Company, which, after being duly read and considered, was unanimously rejected?

A. Yes, sir.

Q. Why was that rejected at that time?

A. We did not believe it was a fair contract for the stockholders. We were representatives of owners, of townships, tax-payers, of a portion of the stock, $50,000, and we thought we were entitled to a representation in the property at a better rate for building the road than was expressed in that. It was wiping out too much stock and too much interest, placing too much interest in Mr. Crawford's hands for the amount he was to pay for it.

Q. When it came down to a little over a month later, on the 15th of March, when you turned over the board of directors to Mr. Crawford or resigned and had put his men in——

A. Not all resigned, but six of the directors resigned.

Q. Only six?

A. Only six that I have knowledge of; six were all that were present.

Q. Were there any resignations sent in by written communication?

A. I have no knowledge. After resigning myself, and after Mr. Crawford had taken my chair, I withdrew from the office where they were; that is, I went into the adjoining room, and I could not swear that there was not; but I don't suppose that there was any presented.

Q. Why do you say you suppose there were not any presented?

798 A. That is, except our agreement. My directors on the 23rd of June had signed an agreement that they would resign. I think that was the only agreement that ever was made.

Q. Who were the three directors who did not resign?

A. John B. Forseman, Silas Sink, and Richard D. Odle.

Q. Who suggested the names of the new board of directors?

A. I suppose Mr. Crawford did.

Q. Who presented the name of the man that succeeded you?

A. Well, I could not say now. I only know I resigned by written resignation as president and director of the road, and one of the remaining board suggested Mr. Crawford's name as far as my memory is concerned now.

Q. Do you know who suggested the names here—who suggested to the members of the board the names that were put in there?

A. As I tell you, I withdrew from the room, and I could not say who did, but I suppose they were named by Mr. Crawford.

Q. Did you know any of the new board?

A. Yes, sir; I knew all of them.

Q. I mean the new board.

A. Yes, sir.

Q. You knew Mr. Conklin?

A. Yes, sir; he was the superintendent of the road.

799 Q. Did you know Mr. Starin at that time?

A. Yes, sir.

Q. Mr. Lacey?

A. Yes, sir; I believe Mr. Moore, if he is in there; I didn't know him at that time.

Q. Henry Moore?

A. Afterwards I knew him.

Q. Did you know D. J. Lyon?

A. No, sir; those two, if they were in, I did not know them.

Q. Did you know Henry Meiselbar at that time?

A. Yes, sir.

Q. You knew him?

A. I had met him in the office there.

Q. In the office of Mr. Crawford?

A. Yes, sir.

Q. Who prepared the mortgage that was executed, bearing date the 1st of November, by which the company deeded in trust to John C. New its property?

A. I should presume Mr. Crawford prepared it.

Q. Who gave it to you?

A. It was sent to me to execute.

Q. By whom?

A. By Mr. Crawford.

Q. Do you remember about what time you executed that mortgage?

A. My recollection is it was in November, 1881; I think the date is there; I think it was December that I signed the bonds.

Q. How many bonds did you sign?

A. A thousand.

Q. What did you do with them?

A. Delivered them to Mr. Crawford or deposited them with his—; he was not present when we put them into the safe.

Q. What safe?

A. The safe in his office there.

Q. Where?

A. At 123 and 125 Dearborn street.

Q. Chicago?

A. In Chicago.

Q. What was to be done with them when you put them in the safe?

800 A. At that time Mr. Crawford had delayed preparing the mortgage longer than he had expected, and the payments that he had made and was to make became a little burdensome to him, I suppose, and he telegraphed to me or wrote to me—I think I have the letters—to come up to execute the bonds; so I went up and they had been prepared, the bonds, and had been signed by Mr. New, and I signed them as president of the road, and the secretary signed them—they had been signed by the secretary.

Q. Had the mortgage been executed at that time?

A. Yes, sir.

Q. Where did you execute the mortgage?

A. At Goodland.

Q. And the bonds you signed here?

A. I signed here.

Q. So that the thousand bonds for a million dollars was executed subsequently in Chicago?

A. Yes, sir.

Q. Do you remember how long after?

A. Well, it was perhaps 30 days—20 or 30 days.

Q. Was it before or after the meeting of the 15th of March, 1882?

A. It was previous to that.

Q. On the 15th of March, 1882, had the company any books of account?

A. Yes, sir.

801 Q. What did you do with those?

A. I have them now.

Q. You have those books of account?

A. Yes, sir; perhaps one or two of them was given up with other papers to Mr. Crawford; I have our ordinary every-day working books, and the books were finally transferred to another office. Mr. Crawford rented another office; they were in my office, and they were all put in with the archieves and brought to Chicago.

Q. From the 23rd of June, 1881, down to the 15th of March, 1882, when your connection with the company closed, what control or management or direction did Mr. Crawford take of the affairs of the company?

A. That is between his first acquiring any interest?

Q. Yes.

A. He took control of the purchase of material and the giving of general directions to me to carry out, and in the latter part of the year he sent Mr. D. H. Conkling down to commence track-laying at Oxford, and I was in the general management of the road, excepting the right of way, but he took no personal control further than furnishing materials until after the 15th of March.

Q. How did it come that prior to the 15th of March he prepared this mortgage or caused it to be prepared and executed and recorded, and also the execution of the bonds?

A. It was in accordance—or else he examined the record there; he provided there in June for the issuing of the mortgage, which never was done, and that was referred to him; I believe in October; you will find it here, following; an amended resolution was
802 made changing it somewhat.

Q. Do you mean the resolution of October 29, 1881?

A. I think that is the one, perhaps.

Q. Then the meeting you refer to was held at Goodland on the 29th of October, 1881?

A. 1881.

Q. The resolution that appears there to have been presented and adopted relative to the issue of the bonds and the execution of the mortgage was prepared by whom?

A. Mr. Crawford; I think a copy of that—I know I prepared a copy, or he had seen the record of the one in June, which did not quite cover all the bonds; and this one was prepared—notes of it were given and put upon the record there.

Q. He prepared that?

A. I think so; I don't know that he did.

Q. Was it or not in pursuance of a request of his that the board of directors passed this resolution?

A. I suppose the request came from him and it came with this; he gave me the amount of expenditures that he had made.

Q. Do you remember how much that was?

A. I think then it was four hundred thousand dollars—about four hundred thousand dollars.

Q. That he had spent at that time?

A. Yes, sir; that is my recollection.

Q. How much of the road had been built.

A. The road then was nearly done from Oxford to Goodland; he had bought the rails and had bought some locomotives, and the matter was under progress clear through—that is, below Ox-
803 ford; contracts had been made with Volney Q. Irwin.

Q. Did he present you vouchers for the expenditure of the money?

A. No, sir; he did not, because I was in the office very often and perfectly familiar with what was coming upon the road there; I received rails there at Goodland—a large amount of them—and gave general directions in regard to piling them up at Oxford.

Q. Do you know whether up to the 15th of March those things had been paid for?

A. I do not; I didn't ask Mr. Crawford for the vouchers.

Q. Do you know now whether they had been paid for?

A. I do not; I supposed they had; I supposed so then, or else there would have been a slight unpleasantness.

Q. And these bonds were given to him, then, some time between the 23rd of June, 1881, and the 15th of March, 1882, as collateral security for the advances that he had made to the company. Is that so?

A. There was no definite contract made between him and myself, except that he was to place those bonds. I was authorized to negotiate them by the first resolution there, and Mr. Crawford had bought the road, representing to me that he had made payments and was able to make full payment upon that $200,000 between Attica and Yeddo—24 miles of road there.

Q That is the Block Coal road?

A. Yes, sir; or 22 miles of road.

Q. Part of the expenditure was in the purchase of that road, was it not?

A. Not the four hundred thousand dollars.

804 Q. Whether that expenditure was made or not you don't know?

A. I don't know; I could not say that it cost entirely $400,000. I know there was a large amount of money came into my hands.

In our adjustment paper here I credited Mr. Crawford $29,000, and I received $13,000 from the county treasurers, making $42,000 of money that I had received.

Q. As I understand from you, Mr. Crawford was simply an agent or broker employed by you as president of the company to negotiate the bonds of the company and raise money to go on and build the company's road?

Objected to by solicitors for complainant.

A. At the time of the execution of the bonds I held $10,000 of the stock; I represented those townships, as it were, because I had been instrumental in imposing the tax on them, and, like every other community, we were anxious to push forward the road. Mr. Crawford had come in the meantime and bought the Block Coal road, so that when we connected at Attica we had got to make terms with him or he with us, else he would build another line through to the air-line road, and I was induced to sell out and transfer our interest there for the sake of putting him in as a capitalist. He went on and furnished the money—not as much as we had expected, of course, because his cash account got short as well as everybody's else. But the matters were kept up in very fair shape while we were
constructing the road. He went on and bought material—
805 bought steel rails at Cleveland and sent them to Goodland;
also sent iron rails to Oxford, a large amount of them, and sent down ties. They came down to Goodland by rail, so that we were ready to furnish the superstructure from Goodland south until we met 7, 8, or 10 miles down the road, where the track had been brought up.

Q. I would like to have you state in your own way just what contract, verbal or written, you had with Mr. Crawford about these advances between the 23rd of June, 1881, and the 15th of March, 1882.

A. There was no positive contract, except I conferred with my executive committee there and with our directors in regard to issuing the bonds, and they were advised by me that I should place them in Mr. Crawford's hands, as he had got so much in the road, he agreeing to go on and negotiate those bonds or use them in finishing up and constructing the road—to build it and equip it. There was no positive contract written; it was only a contract, and I delivered over the bonds to him there.

Q. Did you take any receipt from him?

A. I did not.

Q. You made no written agreement with him?

A. I did not.

Q. When you came to turn over the whole thing to Mr. Crawford's board of directors, leaving him to do with the company exactly as he pleased, what provision, if any, did you make for the protection of these towns?

A. I made the provision in the first place to agree—well, there was some stock subscribed that was not paid for. He entered into

an agreement to buy out the balance of that stock, and that
806 was assigned to him.

Q. That is, to pay the balance due the company on account of stock subscriptions?

A. Yes, sir; some $2,790, along there, in accordance with that agreement, and Mr. Crawford was present when I drew the first money from Newton county, and I had made a contract that there should be stock issued for it, and I was strenuous that that stock should be preserved to the township. He thought it was in the power of the commissioners to make it as a donation or as absolute stockholders. They subscribed stock to the townships as the money came into the treasury. I drew that money out from Newton county and drew it from Benton county. I had drawn $6,000 on the 9th of March, $4,000 on the 10th of March at Kentland.

Q. That does not answer my question quite. On the 7th of February, 1882, Mr. Crawford, through yourself as president, submitted to the board of directors a written contract which has been produced in evidence here?

A. Yes, sir.

Q. Between the company and himself as contractor?

A. Yes, sir.

Q. And you say the board rejected that contract, amongst other reasons, because it practically left the towns who had subscribed the stock without any interest in the road. Now, then, on the 15th of March, a little over a month later, you all resigned and got out, leaving the whole control of the company to Mr. Crawford. What I am asking you about is, what provision for the protection of these
towns against any contract which Mr. Crawford might be
807 authorized to make by his own board of directors you provided?

A. I had delivered when the money was drawn there; I had fulfilled my contract with the townships when they got stock in the road, the same as I would with any other stockholder; they took their chances as stockholders with every one else; I stayed there with my ten thousand dollars expecting to hold it; they stayed there with their several amounts; our township with 15; some places more and some places less; and there was no protection except the general protection that stockholders have.

Q. There had not been any change in the matter between the 7th of February and the 15th of March, had there?

A. No; after we had invested Mr. Crawford in this contract, he having a majority of the stock, we supposed he had power to do whatever he chose with the road; we did not propose to do that until there was provision for the paying out of the debts and making satisfactory arrangements.

Q. Do you mean to say this—that when Mr. Crawford had bought your stock and the stock of your codirectors that then you left the towns to look after themselves?

A. No, sir; we did not.

Q. Now, that is what I want to get at.

A. No, sir.

Q. I want to know what provision you made for the towns.

A. We made no provision, as I tell you, except to take them in as stockholders, as I stayed there as a stockholder, willing to remain and take the chances with my ten thousand dollars; I had that ten thousand dollars. Mr. Crawford told me, "You are
808 very tenacious about your ten thousand dollars." I told
him I had to be; that was all I had finally got for two years' services and about $4,000 in money that I put in, and I had become powerless, as far as exercising any control as against Mr. Crawford, after selling him the other stock; I relied upon him to go on and build the road, which was a great consideration to the townships getting the stock, and I gave them all the representations that I could; I could not make a guaranty there that their stock should be of par value.

Q. You left them to exercise their rights as stockholders.

A. As stockholders.

Q. You have looked over this record-book, have you?

A. Yes, sir.

Q. Outside of those contracts you have introduced and the recitals in the record-book there was nothing done by you or by your codirectors or both of you or all of you with reference to the protection for the stock of these towns?

A. No, sir.

Q. Did you ever have anything to do with the company after the 15th of March, 1882?

A. No, sir; not any official act. I sometimes grumbled at them a little.

Q. When did you first know about the provisions of the construction contract between Mr. Crawford and the company bearing date the 18th of March, 1882?

Solicitor for complainant objected to the question as incompetent.

A. I knew it by rumor, and by—I cannot get the date when
809 I examined that record; Mr. Crawford gave me the record
to examine and I got a certified copy of all that I wanted to get off pertaining to myself in the defense of a suit; there (handing paper to counsel) is the certified copy; but that only comes up to the 15th of March.

Q. Did you get anything after that?

A. I did not go to the records after that; I never saw them again until I saw them here.

Q. When was it you made this examination of the record, as near as you can remember?

A. I will see by Mr. Lacy's certificate here. (Witness refers to paper.) This was in May, 1883.

Q. In May, 1883?

A. Yes, sir.

Q. Do you remember who the board of directors were at the time you made that examination?

A. I do not; I only knew that Mr. Starin was in the board, Henry Crawford, Jr., and Mr. Lacey.

Q. Did you ever have anything to do with the company as an outsider after the 15th of March, 1882; did you have any dealings with the company in any way?

A. No, sir; no business transactions with them except to adjust the old debts, some I had agreed to pay and which I did pay.

Q. In doing that did you have anything to do with Mr. Crawford?

A. I had no business relations with him except to close up the construction debt, which I had agreed to do after the 15th of March.

810 Q. Do you know enough about the company and its affairs to say after the 15th of March, 1882, down to the time of the appointment of a receiver what man or what person had control of the company, who gave directions as to the affairs of the company along the line?

A. The commander-in-chief.

Q. Who was he?

A. Mr. Crawford, Henry Crawford. While it started as my road, it turned out to be Crawford's; Mr. Pierce was on one side and I don't know who was on the other; Mr. Annabell, I believe.

Q. I want to ask you to clear up one matter. I did not understand you to say in your evidence that you knew that Mr. Crawford had expended $400,000 on this work?

A. O, no.

Q. It was simply his representation to you?

A. Yes, sir; he told me he had put into the road, into its construction, what had come through me and the parties below and in equipment that he had incurred, paid and to be paid, $400,000.

Q. Was there included in that what he had paid for the stock; was that a part of it?

A. No, sir; O, no.

Q. That was his statement to you?

A. That was his statement to me; and the bond covering the road that was purchased below, whether it was paid for or not—it had to be paid for and was paid for after. I learned afterwards that it was not paid for when the bond was issued; it was paid for during a year or two following; I don't know when.

Q. That is the Block Coal road?

A. Yes, sir.

Q. Did you ever see that thousand bonds representing a million dollars afterwards?

A. No, sir; I did not.

Q. After you put them into the safe?

A. No, sir.

811 Q. Do you know what was done with them?

A. They were placed in New York, as I am told; Mr. Crawford told me he had not sold them; that is when we were arranging for money or wanted money.

Cross-examination by Mr. **Pierce**:

Q. You was satisfied at the time these bonds were delivered to Mr. Crawford that he had spent $400,000 on the road?

A. I was not satisfied he had spent that full amount; I thought from the estimate I made that the expenditures and the liabilities he was under there that a million of dollars was a fair amount of money—fair security to put into his hands to pay those debts and finish up.

Q. You said, in answer to a question of Col. Cooper's, that those bonds were placed in New York; I will ask you if you did not know as a matter of fact that they were pledged to Drexel, Morgan & Co. to borrow some money?

A. Yes, sir; I knew from their agent, who was upon the road.

Col. **Cooper**: You knew that from Drexel, Morgan & Co.?

A. I knew it from Mr. Dunham.

Q. What did Mr. Dunham tell you?

A. He told me that they held the bonds there as collateral security for what money they were putting in.

The signature of the witness to the above deposition was waived by agreement of counsel.

812 Solicitor for defendants offered in evidence contract dated December 26th, 1884, between Henry Crawford and H. H. Porter and associates, marked Exhibit E.

The further taking of testimony was then adjourned to Thursday, November 5, 1885, at 11 o'clock a. m.

813 **Thursday**, *November 5th*, 1885.

Parties met pursuant to adjournment at 11 o'clock a. m., when, by agreement, a further adjournment was had to 12.30 p. m. this day.

Parties reassembled at 12.30 p. m.

Present: Same as before.

David J. Lyon, a witness called on behalf of defendants, being first duly sworn, was examined in chief by Col. **Cooper**, and testified as follows:

Q. You may state your name, age, occupation, and residence.

A. David J. Lyon; lawyer. I reside at the Continental Hotel, Chicago.

Q. What official position do you hold at present?

A. Justice of the peace.

Q. Justice of the peace in the city of Chicago?

A. Yes, sir.

Q. Do you know Henry Crawford?

A. Yes, sir.

Q. How long have you known him?

A. Well, I have known Mr. Crawford, I expect, eight or nine years.

Q. In March, 1882, where was your office?

A. 125 Dearborn street, in connection with Mr. Crawford; I occupied an office on the floor rented by him.

Q. When did you first hear about the Chicago and Great Southern Railway Company?

A. I am unable to fix the date.

814 Q. Did you ever know you were a director of that company?

A. I was so informed.

Q. By whom?

A. I think Mr. Crawford informed me.

Q. The record-book of the company, at page 86, under date of March 18, 1882, recites that there was a meeting of the board of directors of the company held, at which were present all the directors except McDonald and Moore, and you having been elected director on the 15th of March, that would include you as present on that day. I will ask you whether you were present.

A. I think I was; you know I cannot fix the date.

Q. At this meeting there was a construction contract between Mr. Crawford and the railway company entered into or authorized by the board of directors, as recited by the record-book. I wish you to say just what took place and how it took place at the meeting of the board of directors on that day.

A. My recollection of that is simply this, that I was at my desk and Mr. Starin stepped in.

Q. What Starin?

A. I forget his first name.

Q. William A. Starin?

A. Yes; William A. Starin; and following him was Mr. Lacey, I think, and Harry Crawford, Mr. Crawford's eldest son. They read a paper, the contents of which I have forgotten all about. The terms of it—the conditions of it—I don't remember anything about, but I think it was alluded to as a construction contract; I think so; and it was put rather in an informal way, and we all voted for it.

Q. Did you read it over yourself?

A. No.

815 Q. Did you pay any attention to the consideration of the matter—that is, to the details of it?

A. I was not indifferent to it, but it didn't fix itself on my mind at all.

Q. Was there any discussion about the matter?

A. No, sir.

Q. What interest did you have in the Chicago and Great Southern Railway Company at that time?

A. Not any, except the good will I entertained for Mr. Crawford.

Q. You were not a stockholder of the company?

A. Not that I know of, sir; I never subscribed for any stock.

Q. Was a certificate representing any share of stock ever delivered to you or held by you?

A. Never.

Q. Did you ever purchase any share of stock?

A. Never.

Q. Did you ever pay for any share of stock?

A. Never.

Q. You had no interest in the corporation whatever, then—no pecuniary interest?

A. None.

Q. And, as I understand, the only interest you had was the good will you entertained for Mr. Crawford?

A. Yes, for any service I could render to him at any time; it holds good now.

Q. Do you remember about being applied to by Mr. George W. McDonald, an attorney from down in Indiana and one of the directors, and Mr. Lacey, some time in 1884—the record recites and Mr. McDonald's testimony fixes it as the 18th of February, 1884—being applied to by them when you were holding court?

A. I recall the request.

Q. State what occurred as near as you can.

816 Objected to by solicitor for complainant as incompetent.

A. My reply was this: They came to me to ask me to attend a meeting, and I informed them that a few days previous to that time, or perhaps a few weeks, that the Great Southern had been sued in my court for some claims, and I didn't care about being identified with any corporation or company that might appear as defendant or plaintiff in my court. I informed them of that, and asked them to strike my name from the directory, which they promised to do. Whether they did it or not I don't know.

Q. Was it a meeting of the board of directors they asked you to attend?

A. Yes, sir.

Q. Of the Chicago and Great Southern Railway Company?

A. The Great Southern.

Cross-examination waived.

Signature of witness to the above deposition waived by agreement of counsel.

Henry A. Christy, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. **Cooper**, and testified as follows:

Q. State your name, occupation, and residence.

817 A. My name is Henry A. Christy; 757 Washington Boulevard, Chicago. I am in the lumber and tie commission business, one of the firm of Miller, Christy & Raber.

Q. Do you know Henry Crawford?

A. I do.

Q. How long have you known him?

A. Five or six or seven years.

Q. Do you know anything about the Chicago and Great Southern Railway Company?

A. I know we sold them some ties in 1883.

Q. Through whom did you negotiate the sale?

A. Henry Crawford.

Q. In what capacity did Henry Crawford represent himself to be acting?

A. As president of the road.

Q. Did you get cash for them?

A. We got part of our pay for them.

Q. From whom?

A. From Henry Crawford.

Q. Did you get all of it?

A. No, sir.

Q. How much of it didn't you get?

A. About $1,142. I don't know whether there has been anything paid since that time or not. Mr. Allen knows.

Mr. **Allen**: No, not to my knowledge.

Col. **Cooper**: You furnished these ties in 1883?

A. Yes, sir.

Q. While Mr. Crawford was president of the road, as you understand?

A. Yes, sir.

Q. What time in the year, probably?

A. They were billed July 7, 1883: $1,542.17; same date,
818 $1,315.02; July 31, $947.91 and $577.30; August 7th, $300.
They had been delivered previous to the time they were billed.

Q. And the arrangement for purchase was made by Mr. Crawford, how long prior to the time they were delivered, about?

A. Oh, I don't know; I should not think it would be very long; probably a couple weeks—three weeks—perhaps a month; I should not think it would be more than two or three weeks.

Q. Prior to the dates you have given that they were delivered?

A. Yes, sir.

Q. What were the ties for?

A. They were for the Chicago & Great Southern railway; they were shipped to the Chicago and Great Southern road.

Q. At what point, do you remember?

A. No, I do not remember.

Q. Attica?

A. I don't think it was.

Q. Fair Oaks?

A. Fair Oaks, yes, sir; I think they were all shipped there, but I would not be positive about that; that is my impression.

Q. The balance of this bill, some $1,100, was not paid?

A. No, sir.

Q. What did you do with it?

A. Put it in Dexter, Herrick & Allen's hands.

Q. To get judgment on?

A. Yes, sir.

Q. Against what?

A. The Chicago and Great Southern road.

Q. What, if anything, did Mr. Crawford say to you as to his individual liability for the bill? I mean not as president of
819 the company, but individually.

A. I don't think he ever said anything; I don't remember—I don't recall.

Q. It was a deal with the railway company through him?

A. Yes, sir; the bills were made to the Chicago & Great Southern road.

Q. Through Mr. Crawford, as president of the company?

A. Yes, sir.

Q. Do you know Henry H. Porter?

A. I think that is the gentleman there (indicating), but I am not certain. If that is him, I know him; if it is not, I do not.

Q. It is he; how long have you known him?

A. I have not known him; I think I had an introduction to him once three or four years ago, but it was only a moment or two on another matter, and I have forgotten what it was. It seems to me about some ties, but I have no acquaintance with him whatever.

Q. Did you ever go to see Mr. Porter about this matter?

A. I did.

Q. When?

A. Well, it was just before we put it in Dexter, Herrick & Allen's hands; I can't tell just when. It seems to me it was along last year some time.

Q. In 1884?

A. I think it was before the suit was commenced. The only way I can call it to mind is there was talk on the street of Mr. Porter buying that road, and if he bought it he would pay these bills.

Solicitor for complainant objected to the answer.

820 Q. You heard a rumor on the street about Mr. Porter buying the road?

A. Yes, sir.

Q. And in pursuance of that rumor what did you do?

A. I went to Mr. Porter's office three or four times to see him.

Q. Did you see him?

A. I did not.

Q. Did you see anybody who represented him?

A. I saw a man that represented himself as being the private secretary, in the outer office.

Q. What kind of a looking man was he?

A. A rather tall man with, I think, a mustache—not very stout.

Q. Do you remember whether it was Hillard?

A. I think that is his name; I would know the man if I saw him; he seemed to have charge of things in a small office on the outside; I don't see the man here at all.

Q. He is not here to-day. What talk did you have with him?

Objected by solicitor for complainant.

Mr. Pierce: Did you go to see him with a view to compromising this claim?

A. No; I went to see if he was going to buy the road, hoping to find out whether we were going to get our money or not.

Q. Answer the question.

A. I was told by Mr. Shumway that Mr. Porter was talking of buying the road, and probably would buy it.

Col. COOPER: P. B. Shumway?

A. Yes, sir.

Q. Who was receiver of the road afterwards?

A. I guess he was afterwards; I think it is P. B. Shumway.

821 Solicitor for complainant objected to all this testimony.

A. It is Shumway that occupies an office with Mr. Crawford, or has.

Q. You had a talk with Mr. Hillard?

A. Yes, sir.

Q. Now just state that conversation as near as you can remember it, or the substance of it?

Objected to by solicitor for complainant.

A. I told Mr. Hillard, or whatever his name was, what I was there for, the reason I wanted to know whether Mr. Porter was going to buy the road or not.

Q. What did you tell him was the reason?

A. That we had money due us for material furnished to the road. Do you want to know what he said to me?

Q. Yes, the whole thing on both sides.

Objected to by solicitor for complainant.

A. He said they had been down over the road; Mr. Porter, I think he said had been, and that he had been, and that they were going again, but that, in his opinion, it was doubtful as to whether they would buy the road or not; he was not authorized to say anything, he said, in reference to the matter; I asked him what he guessed; I tried to get his opinion about the matter, and I asked him what he would guess about it. "Well," he said, "if I had to guess I should guess it was doubtful." That is about all; he didn't give me any encouragement; I think that was about the shape he put it.

822 Q. Is that the only interview you had with him? Did you have any other interview there?

A. No; I did not. I had been in there two or three times before and asked for Mr. Porter, and didn't see him at those times, and I didn't tell this gentleman my business.

Q. Was there any talk about claims on the road? Did he say anything about the indebtedness of the company?

Solicitor for complainant objected to all testimony with reference to the interview with Mr. Hillard.

A. Oh, yes; Mr. Hillard said Mr. Porter would not buy that road until the bills were all paid or straightened out, and if he did buy the road he would reserve enough money to pay the bills outstanding against the road. He said Mr. Porter would not take anything on his hands unless he knew just what it was, and that it was a clean thing. He would not get into trouble with anything of that kind; it would have to be all cleared out.

Q. What, if anything, was said as to the amount of indebtedness by him or by you?

A. I don't recollect; I told him about what was due us, I think, but as to anything else I don't recollect now.

Cross-examination by Mr. PIERCE:

Q. When was this conversation, do you remember?

A. I cannot tell—but I know this: that he said they had
823 been down over the road, and were going again.

Q. That was in the year 1884?

A. During the year 1884.

Q. What time of the year 1884—winter or fall?

A. I should think it was along towards fall.

Q. Along towards fall?

A. I should think so, but I would not be positive; it might have been midsummer.

Q. What is your best recollection about when it was? Wasn't it early in the spring of 1884?

A. It might have been; I don't know. The only way I can recall the time, now I think of it, is what that gentlemen told me—that they had been down over the road.

Q. How does that make you fix the time?

A. It don't make me fix the time; it makes me fix the time that it was about the time when they went down over the road, if it is material what the time was.

Mr. CRAWFORD: I want to ask some questions, knowing the facts better than any other counsel.

Q. Mr. Christy, how much altogether was the total amount of tie sales that you made to the Chicago and Great Southern?

A. In 1883?

Q. Altogether.

A. As I have it here, it is $4,684.84.

Q. Four thousand dollars, all told?

A. Yes; well, that was in 1883.

Q. I told you all told.

A. I cannot tell you if there was any more than that.

Q. Don't you remember about eleven odd thousand dollars
824 being paid you in the spring of 1883 by a check on Drexel, Morgan & Co.?

A. I don't recollect, and I could not say it is not so either, Mr. Crawford.

Q. Don't you remember very well that there was a large shipment of ties made in 1882, and that you were paid nearly twelve thousand dollars by a check on Drexel, Morgan & Co. direct?

A. I don't remember it, Mr. Crawford; at the same time, it might be true; I don't recollect; all I have a memorandum of here and can tell you about is the 1883 sales.

Q. Don't you remember that there was quite a delay in making payments for ties at the end of 1882, and that when you got that payment early in the spring of 1883 that you got it in a direct check on Drexel, Morgan & Co., countersigned by Roswell Miller, and that I told you personally that I had made a loan there, and that the bonds of this company were pledged there? Refresh your recollection on that point, Mr. Christy.

Objected to by solicitor for defendants.

A. I think I recollect getting some money from you—a check on somebody, countersigned by somebody else. I could not tell the amount, Mr. Crawford, and I don't know what it was.

Q. Never mind the amount. Didn't I also inform you at that time and before that that money was gotten from Drexel, Morgan & Co.; that I had made a loan there on the securities of this company?

Objected to by solicitor for defendants.

A. I don't recollect about it, Mr. Crawford.

825 Q. Don't you remember you had several conversations with me with regard to the payment of quite a balance of a tie bill in 1882, pending these negotiations for this loan of money in New York, and that you were paid in one of the first checks on that loan?

A. No; I don't know anything about the loan. Of course, you might have mentioned it to me; I can't recollect whether you did or not; I think I do recollect getting a check, countersigned by somebody else, but I don't know who it was on now—not from memory.

Q. Did you ever get any payment made on any of your tie bills, either in 1883 or any other year, from the Great Southern Company in any other way except by currency from me or by my own personal check?

A. That I cannot answer; I have had currency.

Q From whom?

A. That was from you.

Q. Whose check did you get when you got a check?

A. I think you signed the check; I don't know whether you signed it as president or whether it was an individual check; I have no remembrance of that.

Redirect examination by Col. Cooper:

Q. Did you have to see Mr. Crawford frequently from 1882 down to 1883 with reference to your bills?

A. Well, as to seeing him frequently from 1882, I think I recollect getting a check, but I don't know how frequently I saw him up to the time that we sold him these ties in 1883. 826

Q. Had the other matter been settled up—the old?

A. It seems so, because there don't anything appear on our books now, as I have got this memorandum, until July 7, 1883; the other matter must have been settled.

Q. Did you have any personal dealings with Mr. Crawford prior to 1883 with reference to the Chicago and Great Southern railway — to furnishing ties; did you yourself?

A. He says we furnished him ties; I presume we did.

Q. Do you remember?

A. I don't remember; I think we did, because I have a recollection of getting a check from him countersigned by somebody else prior to this time.

Q. Do you remember whether you were dealing with him in 1882, as president of the company, the same as in 1883?

A. I don't remember.

Q. You don't remember how that was?

A. No, sir.

The signature of the witness to the above deposition is waived by agreement of counsel.

Charles L. Allen, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. Cooper, and testified as follows:

Q. State your name, occupation, and residence.

827 A. Charles L. Allen; residence, Chicago; occupation, attorney.

Q. What is your firm?

A. Dexter, Herrick & Allen.

Q. Were your firm attorneys for any of the creditors of the Chicago and Great Southern Railway Company prior to 1884?

A. They were; Miller & Christy and Marsh & Bingham, or the Marsh & Bingham Company.

Q. Creditors as furnishing what?

A. Mr. Christy furnished ties, I remember, and the Marsh & Bingham Company timber.

Q. Those claims are claims that are in judgment in this case, are they?

A. They are in judgment—judgment obtained against the Chicago and Great Southern railway in the United States circuit court for this district.

Q. Do you know Henry H. Porter?

A. Well, I know him as I have seen him in connection with this matter.

Q. When did you first see him in connection with the Chicago and Great Southern Railway Company?

A. Somewhere in the summer of 1884; I think it was in the summer.

Q. On what account did you see him?

A. Indirectly from the same source that Mr. Christy has mentioned; he requested me to see Mr. Porter, stating the fact to be that it was rumored upon the street that Mr. Porter was about to purchase this road, and subsequently, at his request, I called upon Mr. Porter to find out what truth there was in it, and what he proposed to do with reference to these claims.

Q. Did you see Mr. Porter?

A. I did.

Q. Where?

828 A. I saw him in his office and in our office; in our office, as I remember it; he, perhaps, was in to see Mr. Dexter; I don't know about that; I accidentally saw him there one day and spoke to him before he stepped out.

Q. Was that the last or the first conversation?

A. My impression is that that was the last one.

Q. State what occurred at the first conversation, what was said there.

A. I stated to Mr. Porter what I had heard, and asked him what truth there was in it, what was proposed to be done with these claims.

Q. What claims?

A. I stated in the first place that we represented these two claims, and I don't know whether I asked him what was proposed to be done about these claims or about similar claims, knowing that there were a good many. Mr. Porter said, as Mr. Christy says his man said, his private secretary, that there had been some talk on the subject, but there was nothing settled about the purchase, and that the road seemed to be somewhat complicated, and that he proposed to have these claims disposed of before he took hold of it.

Q. The claims against the road?

A. Against the Chicago & Great Southern.

Q. What, if anything, was said about the amount of the claims that were outstanding at that time?

A. I don't think that was discussed prior to the time of his purchase. I saw him afterwards about it.

Q. Was that all that took place at the office?

A. That is the substance of it at both interviews; I think the other was very brief, and I am not so sure that it covered all
829 the ground I have mentioned, but the substance of it, I think, *it* was the same. I also sent Mr. Walker to see him, who represented these claims.

Q. You sent Mr. Wirt D. Walker to see him?

A. Yes, sir.

Q. Where is Mr. Walker now?

A. Mr. Walker is at present out of the city; he will be here Saturday or Monday.

Q. Did you see Mr. Porter after the purchase?

A. Yes, sir.

Q. About what time was that?

A. I think it was in the month of December, 1884. When was this receiver appointed?

Q. On the 27th of October, 1884.

A. Well, I have just seen this morning the contract that was entered into between Mr. Porter and Mr. Crawford, dated the 26th of December; my impression is it was prior to that time; perhaps, as I understand it; and it was about the time when I was talking with him that the purchase had been consummated; that was my understanding; I don't know what the fact is.

Q. Where was that interview?

A. That was in his office; it was just about the time they were closing the matter up; I don't know just when the date was; my impression is it was in December; it was in the winter of 1884-'5.

Q. What did you go there for?

A. I went there, understanding he had purchased the road, to ask him directly what he proposed to do about these claims, having previously understood he would pay them before he took it, or see that they were arranged for?

Q. What did he say?

830 A. The substance of his reply was that he would defeat it if he could.

Q. What did you say?

A. Well, I told him that we should attempt to do the same thing by the mortgage.

Q. Did you call to mind what he said to you; was there any talk about that?

A. Well, now, I should only guess at that; I don't recollect whether there was or not. I think Col. Spooner happened in while we were talking, perhaps at the close of the interview. The interview was not long, because there was not much to say about it. He said he would not pay them.

Q. And would defeat them if he could?

A. Yes, that was the substance of it; perhaps not that language.

Cross-examination by Mr. PIERCE:

Q. You say that was the substance of his answer?

A. Yes, sir.

Q. Did he tell you to file your claims in court, and that he could only pay them after they had been allowed?

A. He told me —; then I had a subsequent interview with him, I think; it seems to me I had two.

Q. In that conversation you have just been telling about?

A. He told me he would not pay those claims unless they were established as liens ahead of the mortgage.

Q. That is what he told you then, was it?

A. Further intimating that he would beat them if he could. That was very plain.

831 Q. I mean not what he intimated or what your inference was; I ask you what he said.

A. If you want to know what he said I cannot tell you. If you want to know what the substance of the conversation was, I told you in the first place——

Q. You placed that construction on it.

A. I placed two constructions upon it; in the first place that he said that he would beat this claim if he could, and in the second place we must compel him to pay them by the order of court or decree.

Q. You tried to get him to settle your claims, didn't you, in that conversation?

A. I wanted him to, of course.

Q. Did you try to get a compromise of your claim?

A. No, sir; I did not at that time.

Q. You simply asked him to pay them?

A. Yes, sir; and I called subsequently with Col. Cooper; I don't know when.

Q. I don't ask about that; I ask in this conversation.

A. No, sir; I didn't ask him to compromise the claims at that interview.

Q. But the upshot of it was you would have to file your claims against the road?

A. Yes, sir.

Q. If they were allowed ahead of his bonds that they would be paid; otherwise they would not?

A. Yes; but he would defeat them if he could.

Q. That was the substance of your conversation?

A. Yes, sir.

The signature of the witness to the above deposition was waived by agreement of counsel.

832 Solicitor for defendant introduced in evidence thirty certificates of stock, numbered from 1 to 35, inclusive, of which Nos. 1 to 5, inclusive, and numbers 31 to 24, inclusive, are for a thousand shares each, each share of the par value of one hundred dollars, and numbers 6 to 30, inclusive, for one hundred shares each of the par value of one hundred dollars each, and number 35 for five hundred shares of the par value of one hundred dollars per share, all of said shares of stock bearing date of issue Chicago, Illinois, January 26th, 1884, signed Henry Crawford, president; F. F. Lacey, secretary, and bearing the corporate seal of the company and all issued to Henry Crawford and all assigned in blank by Henry Crawford, witnessed by Walter B. Howe, and which certificates of stock are each of the following tenor and effect:

Capital, $2,000,000.

No. 1. 1,000 shares.

The Chicago & Great Southern railway.

This is to certify that Henry Crawford is entitled to one thousand shares of one hundred dollars each of the full-paid capital stock of the Chicago & Great Southern Railway Co., transferable on the books of the company, in person or by attorney, upon the surrender of this certificate.

Chicago, Ill., January 26th, 1884.

[Seal of Company, State of Indiana.]

HENRY CRAWFORD, *President.*

833 Attest: F. F. LACEY, *Secretary.*

Endorsed on back as follows:

Transfer.

——, 188-.

For value received — hereby sell and assign — shares of the within stock to ——, and hereby constitute —— as — true and lawful attorney to make all necessary transfers on the books of the Chicago & Great Southern railway.

Witness my hand.

HENRY CRAWFORD.

Witness:
WALTER B. HOWE.

The above evidence as to the stock certificates is agreed to by counsel for the respective parties in lieu of the original certificates themselves.

HENRY MEISELBAR, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. COOPER and testified as follows:

Q. State your name, occupation, and residence.

A. Henry Meiselbar; attorney; I live in Chicago.

Q. Do you know Henry Crawford?

A. Yes, sir.

Q. How long have you known him?

A. Ten years.

Q. Were you ever in any relation with him in business?

A. Yes, sir.

834 Q. What?

A. I was his clerk for a number of years, and also was connected with his railroad enterprises in various capacities.

Q. Which ones?

A. First with the Chicago & Danville.

Q. Were you with the Chicago & Indianapolis Air Line Railroad Company?

A. Yes, sir.

Q. Where did you have your office while you were connected with him?

A. I was with Mr. Crawford, in his office, at that time.

Q. Where were you in March, 1882?

A. 125 Dearborn street.

Q. Were you with Mr. Crawford at that time?

A. I don't believe I was at that time; no, sir.

Q. Did you have a separate office?

A. Yes, sir.

Q. The record-book recites that on the 15th of March, 1882, you were elected a director of the Chicago & Great Southern Railway Company in place of R. G. Odle, who resigned. It recites that you were present at a meeting of the board of directors, held on the 18th of March, 1882—that is to say, that all the directors except two other gentlemen, of whom you were not one, were present. Were you present at that meeting?

A. No, sir.

Q. When did you first know that you were recorded in the record-book as a director of the railway company?

A. On last Saturday morning.

Q. That would be the 31st of October?

A. Yes, sir.

Q. Of the present year?

A. Yes, sir.

Q. How did you find it out?

834½ A. Through an examination of the record-book in Mr. Porter's office in company with Col. Cooper.

Q. Were you present at any meeting of the board of directors?

A. No, sir.

Q. Never at any meeting?

A. Never at any meeting.

Q. Did you ever get a notice of a meeting?

A. No, sir; I never saw any.

Q. Did you ever pay for a share of stock?

A. No, sir.

Q. Did you ever have any interest in the railway company personally?

A. No, sir.

Q. I would ask you whether you examined the proceedings of a meeting of the board of directors of the railway company, as recorded in the record-book from pages 86 to 102, inclusive, being the meeting of March 18, 1882?

A. Yes, sir.

Q. When?

A. Last Saturday morning and since then.

Q. Have you looked over the construction contract of Henry Crawford?

A. I have not—not entirely—in the record-book; I have examined a copy of it thoroughly.

Q. When did you first see or hear of that construction contract—about what time?

A. I did not hear of this particular construction contract until some time in the month of January of the present year.

Q. When did you first see a copy of it?

A. The first copy I saw was down in Indiana.

Q. Have you ever seen the original except as it is recorded in the record-book?

A. No, sir.

835 Q. You are recorded in the record-book, on page 103, as having been elected director at Goodland, Indiana, on the 1st of May, 1882, at a meeting of the stockholders of the company; did you ever know it?

A. No, sir; not until I saw it in the record-book.

Mr. PIERCE: When was that?

A. Last Saturday morning.

Col. COOPER: You are reported in the record-book, at page 106, as having been present at a meeting of the board of directors held in Chicago on the 29th of January, 1883; were you or not present at that meeting?

A. No, sir.

Q. On page 110 your name appears as having been copied to a resolution changing the location and line of road; did you ever sign such a decument?

A. To the best of my recollection, I never signed such a paper.

Q. When did you first hear of your name being signed to it?

A. When I saw it on the book on last Saturday morning.

Q. Is this signature in the book in your handwriting?

A. No, sir.

Q. You appear in the record-book on page 131, at a meeting held on the 18th of April, 1883, as having been present at a meeting of the board of directors in Chicago; were you or not present at that meeting?

A. No, sir.

Q. I understand you to say you never knew or heard that you were one of the directors of this company until last Saturday?

A. I never knew it; I never had an idea I was a director, and no one of the directors whom I personally knew and have known
836 for some time past never at any time mentioned to me that I was a codirector, either on the book or otherwise.

Q. On the 18th of March, 1882, were you on speaking terms with Mr. Crawford?

A. Yes, sir.

Q. How often did you meet him?

A. I used to meet him whenever he was in the city—every day he was in the city.

Q. You at that time had an office in the same building with him?

A. I think that was the year; 125 Dearborn street.

Q. Did he ever say anything to you about it?

A. Never at any time, to my best recollection.

Cross-examination waived.

The signature of the witness to the above deposition is waived by agreement of counsel.

Walter F. Cobb, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. Cooper, and testified as follows:

Q. State your name, occupation, and residence.

A. My name is Walter F. Cobb; I live in Chicago; I am secretary of this company.

Q. What company?

A. The Chicago & Great Southern Railway Company.

Q. Where does that company have its office?

A. Its office now is in Attica—the receiver's.

837 Q. Where is your office?

A. My office is room 37 Portland block.

Q. Does the railway company keep an office there?

A. The record-book has been kept there.

Q. I am asking you whether the railway company keeps an office there—rents an office and pays for it.

A. No, sir; I don't know that they do pay for it.

Q. Whose office is it?

A. Well, it is the office of the Lake Michigan and Ohio River railroad and H. H. Porter.

Q. Is Mr. Kimbal, the receiver of the Chicago & Great Southern, or Mr. Porter, or either of them, connected with the Lake Michigan & Ohio River Railroad Company?

A. Yes, sir.

Q. Mr. Porter occupies the office also?

A. He occupied office 38; he is not in the office I am in; I am in room 37.

Q. He has what might be called the run of the office, hasn't he?

A. Yes, sir.

Q. Whom do you take orders from?

A. I take orders from H. H. Porter.

Q. Were you present at a meeting of the stockholders on the 4th of May, 1885?

A. I was.

Q. Did you take any part in the election of directors?

A. I voted.

Q. What did you vote?

A. I voted for the board of directors that were up.

Q. The board of directors that were up; who put them up?

Objected to by solicitor for complainant.

A. I don't know, I am sure.

838 Q. Don't you know?

A. No, sir; I don't know.

Q. Who told you whom to vote for; how did you find out who to vote for?

A. Nobody told me who to vote for.

Q. How did you find out who to vote for?

A. I saw the ticket and voted it; the board that was up.

Q. There was no controversy over that matter?

A. No, sir.

Q. On the 4th of May, 1885, the day that this stockholders' meeting was held, were you secretary at that time?

A. Not at the time the stockholders' meeting was held; no, sir.

Q. What did you vote on?

A. I don't understand what you mean.

Q. You say you voted. What were your credentials; what did you have to vote on; did you have any stock?

A. I had one share of stock; yes, sir.

Q. Where did you get it?

A. Mr. Porter gave it to me.

Q. What did you pay for it, if anything?

A. I didn't pay anything.

Q. What did you do with it when you got through voting?

A. The certificate was there in the office—in Mr. Porter's office.

Q. Did you give it back to Mr. Porter?

A. I didn't give it to Mr. Porter; no, sir.

Q. Whom did you give it to?

A. I gave it—I don't know; I don't remember now who I gave it to.

Q. Where is it?

A. I could not say.

Q. It is not yours, is it?

A. It is not in my possession now.

Q. Is it yours?

A. I don't know as it is; it stands in my name; I have not the certificate.

Q. You haven't any control of it, have you, as against Mr. Porter?

839 A. No, sir.

Q. Who else was there at the meeting?

A. At the stockholders' meeting?

Q. Yes.

A. There was Mr. Lacey there, Mr. Gardner, Mr. C. W. Hillard.

Q. What Mr. Gardner?

A. Mr. Henry A. Gardner.

Q. The attorney?

A. Yes, sir; Mr. Ferry, I think.

Q. What Mr. Ferry?

A. James W. Ferry; Mr. Farr.

Q. Do you remember how many shares of stock Mr. Kimball voted; was he there—George C. Kimball?

A. I think Mr. Kimball was there.

Q. Do you remember how many shares of stock he voted?

A. No; I do not.

Q. More than one?

A. I do not remember.

Q. Mr. E. F. Lawrence, did he vote any shares of stock?

A. Mr. Lawrence, I don't think, was present at the meeting; he might have voted by proxy?

Q. The record recites that there were 12,000 votes, which would represent 12,000 shares of stock; was there any large number of shares of stock voted by any one man in person or by proxy?

A. I don't remember who held the proxies.

Q. Have you got the proxies?

A. No, sir.

Q. Where are they; what was done with them after the meeting?

A. I could not say.

Q. You were secretary?

A. I was not secretary at that meeting.

Q. Were not they turned over to you when you became secretary?

A. No.

840 Q. Have you seen them since?

A. No, sir.

Q. In whose handwriting is the record of that meeting in the book?

A. That is my handwriting.

Q. Where did you get the minutes to write up that meeting from?

A. I wrote the minutes myself.

Q. When?

A. After the meeting.

Q. Nobody furnished you anything; it was just as you remembered it?

A. I wrote the minutes of the meeting myself, I remember, at the time.

Q. At the time the meeting took place?

A. After the meeting. I took notes of the meeting.

Q. Who told you to take notes of the meeting?

A. That is not the stockholders' meeting; that is the directors' meeting; the book is open at the directors' meeting, not the stockholders'.

Q. I mean the stockholders' meeting. In whose handwriting is the stockholders' meeting?

A. That is in my handwriting.

Q. When did you write it?

A. I don't remember the date. I wrote it after I got back; as soon as I got back from the meeting.

Q. Where was the meeting held?

A. The meeting was held at Fair Oaks.

Q. Did you have minutes of the meeting; did you keep minutes of the meeting?

A. I have the record papers over there.

Q. Did you keep minutes of the stockholders' meeting?

A. Not the stockholders'; no, sir; I did not.

841 Q. What did you write this up from—your recollection?

A. I think that the secretary, Mr. Lacey, took the minutes of the meeting.

Q. And gave them to you, and you wrote them down?

A. I don't remember that he gave them to me; I know he was secretary of the meeting and the minutes were given to me, and I wrote them in the book. Mr. Lacey, the secretary, if I remember rightly, signed them.

It is admitted that the signature of the secretary is Mr. Lacey's signature.

Q. Were Lacey, Gardner, Hillard, Ferry, Farr, and Kimball all the people that were present at the stockholders' meeting at Fair Oaks on the 4th of May, 1885?

A. I think there was Mr. Curtiss, of Oxford.

Q. Do you remember his first name?

A. I do not remember his first name.

Q. Were those seven people all that were there?

A. There was one other gentleman there with Mr. Curtiss; I don't remember his name.

Q. Were those people all that were at the meeting?

A. I could not say.

Q. How did you gentlemen find out who was entitled to vote down there; did each one of you have your shares of stock that you voted?

A. I could not say that.

Q. You had your own share?

A. I think I had mine.

Q. Do you remember whether the others had or not; whether they produced them or not? 842

A. No, sir; I don't remember.

Q. How long did the meeting take?

A. I don't remember exactly.

Q. About how long?

A. I should say an hour.

Q. Don't you remember, sir, whether any of these gentlemen besides yourself had their shares of stock there present at that meeting—share or shares of stock? I mean certificates representing stock in this company.

A. I don't remember whether they did or not; I suppose they did, but I should not want to swear that they did; I don't know.

Q. You suppose they did; why do you suppose they did.

A. I don't know why I suppose so; I suppose it is customary at a meeting to have their stock.

Q. That is the only reason why you suppose so, because it is customary?

A. Yes, sir.

Q. Are you in the habit of attending stockholders' meetings of corporations?

A. No, sir.

Q. Who represented Mr. Porter's stock at that meeting; who voted that?

A. I could not say.

Q. Did some one of the gentlemen there?

A. I could not say.

Q. Don't you remember?

A. No, sir.

Q. Do you remember any one voting a large number of shares of stock there in person or by proxy?

A. I remember of some; yes, sir.

Q. Who did?

A. I could not say who did.

Q. It didn't make a very great impression on your mind?

843 A. No, sir.

Q. You don't know where that certificate representing the share of stock you had is now?

A. I don't know.

Q. When did you see it last?

A. I think after the meeting—the day after the meeting; a day or two after.

Q. Where did you see it?

A. I saw it in my pocket; I had it in my pocket.

Q. What did you do with it?

A. I don't remember whether I gave it to—who I gave it to.

Q. You treated it as a matter very immaterial and indifferent, did you?

A. (No answer.)

Q. As a matter you had no interest in; is that so? I mean pecuniary interest.

A. I didn't have any pecuniary interest in it.

Q. In the stocks?

A. Not in the stock; no, sir.

Q. What books besides the record-book of the Chicago & Great Southern railway are there?

A. The stock-certificate book.

Mr. **Pierce**: Do you mean record-books or stock-books, or what?

Col. **Cooper**: I mean books in which the proceedings of the corporation are kept; its accounts and moneys, property, and all that; books of account and other books in which the proceedings of the corporation are kept. Is there anything outside of this record-book?

A. I haven't seen anything but that record-book.

Q. You have only made a record of meetings in this record-book?

A. I made a record of but one meeting really; not the stockholders' meeting.

844 Q. That didn't take you very long, did it?

A. This directors' meeting?

Q. Yes; about how long?

A. I don't know how long; I don't remember.

Q. When you haven't been doing that what have you been doing?

A. What do you mean?

Q. I mean how have you employed your time at room 27 in the Portland block during office hours—what doing?

A. I had business to attend to.

Q. What business; whose business?

A. Mr. Porter's business.

Q. This is a little mere incident of your business; your duties as secretary of the corporation don't take you any time at all?

A. My duties have not been very heavy—no.

Q. The balance of the time you work for Mr. Porter and he pays you?

A. Yes, sir.

Q. Who paid your expenses down to Fair Oaks when you went down there to the stockholders' meeting?

A. I didn't incur any expenses. I had a pass on the Louisville & New Albany road, and that is all there was—to go down there and ride back again.

Q. Who got you the pass?

A. I don't know. Mr. Porter got it, I think.

Q. You went down and back the same day?

A. Yes, sir.

Cross-examination waived.

Signature of witness to above deposition waived by agreement of counsel.

Adjourned to Friday, November 6th, at 11 o'clock a m.

845 FRIDAY, *November 6th*, 1885.

Parties met, pursuant to adjournment, at 11 o'clock a. m.

CHARLES S. WORDEN, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. State your name, occupation, and residence.

A. Charles S. Worden; I have been general agent of the Chicago and Great Southern railroad; at present out of employment; residence, Attica, Indiana.

Q. Up to what time were you the general agent of the Chicago & Great Southern Railway Company?

A. Up to September 1, 1885.

Q. When did your connection with the Chicago and Great Southern Railway Company commence—about what time?

A. I think, August, 1882.

Q. In what capacity?

A. I was employed as purchasing agent, you might say; that is what Mr. Crawford called me.

Q. What person did you make your engagement with?

A. Mr. Starin.

Q. What Mr. Starin?

A. William A. Starin.

Q. Did you ever talk with Mr. Crawford about the matter?

A. I was introduced to him. He asked me what knowledge I had in the business; that is all. He told me to go down to work in the morning.

846 Q. Mr. Crawford did?

A. Yes, sir.

Q. Did you continue in that capacity up to the time of the appointment of the receiver, in October, 1884?

A. Well, I was most everything, Mr. Cooper, from the beginning to the time the receiver came in—general agent, freight agent, and everything else.

Q. You acted under Mr. Shumway when he was receiver, did you?

A. Yes, sir.

Q. Under Mr. Foster when he was receiver?

A. Yes, sir.

Q. And then Mr. Kimball when he was receiver?

A. Yes, sir; up to September 1st.

Q. Of this year?

A. Yes, sir.

Q. Were you ever a director of the company?

A. Yes, sir.

Q. When did you become a director?

A. I could not say.

Q. About when?

A. I don't know.

Q. Did you ever attend a meeting of the board of directors?

A. One meeting only.

Q. Where?

A. At the Montauk building—Mr. Crawford's office.

Q. When was that meeting?

A. I think it was in August, last year; I could not say exactly as to the month.

Q. August, 1884?

A. 1884; yes, sir.

Q. Do you remember what business was transacted at that time?

A. Well, I got in there a little late. It was in regard to taking up some bonds and issuing some bonds in place thereof.

Q. Taking up some bonds and issuing other bonds in place
847 of them?

A. Yes, sir.

Q. Who was present besides yourself?

A. Mr. George McDonald, Mr. Lacey, Mr. Moore, Mr. Harry Crawford, Jr., Mr. Crawford, and myself; I believe that was all.

Q. Was John B. Forseman there?

A. No, sir.

Q. What Moore was it that was there?

A. Elijah Moore, Jr.

Q. Had he been a director before that time, do you know?

A. I could not say.

Q. Didn't you make him a director at that meeting?

A. I could not say as to that, because, as I say, I got in late; I could not say.

Q. Wasn't that a meeting held on the 18th of February, 1884, a year ago last February?

A. It was the only meeting I attended, and I thought it was August.

Q. Do you remember about any bonds being issued to Mr. Crawford at that meeting?

A. That was the one; they were to be issued; it may have been February, but I thought it was in August.

Q. Can you state any reason why you thought it was August instead of February?

A. I don't know that I can; it struck me Mr. Crawford went East in regard to raising some money, and didn't raise it, and, as I understood it, this was to help him out in money matters; but I thought that it was in August; it might have been February; I cannot positively say now.

Q. Do you remember about this circumstance as to George
848 McDonald having a paper in his hands, a paper of instructions from Mr. Crawford?

A. No, sir; I do not.

Q. You don't remember about that?

A. No, sir; I do not.

Q. What pecuniary interest as a stockholder did you have in the Chicago and Great Southern?

A. I had one share.

Q. Did you have a certificate for it?

A. No, sir.
Q. How do you know, then, you had one share?
A. I was told so frequently by Mr. Lacey.
Q. You never had a certificate?
A. No, sir.
Q. You never paid anything for it?
A. No, sir.
Q. Did you ever subscribe for a share of stock?
A. No, sir.
Q. Nor you never bought one?
A. No, sir.
Q. Do you know Mr. Porter—Henry H. Porter?
A. Yes, sir.
Q. How long have you known him?
A. Since about that time Mr. Kimball was appointed receiver.
Q. Some time in the spring of 1885?
A. April, I think it was, 1885.
Q. Did you ever see Mr. Porter before that?
A. I don't think I ever did, that I know of.

It is agreed that in case Mr. Pierce, counsel for complainant, who is absent, wishes to cross-examine this witness, the witness will be called for cross-examination.

The signature of witness to above deposition is waived by agreement of counsel.

849 HENRY MEISELBAR was recalled for further cross-examination.

Mr. CRAWFORD: I desire to ask the witness a few questions.

Q. You testified yesterday that you were not aware until last Saturday that you had ever been named as a director of the Chicago and Great Southern railway.
A. I decline to answer, Mr. Crawford, any question whatever.
Mr. PIERCE (to the commissioner): Repeat that question for me.
A. I never had any intimation of it, idea, or any information from anybody or from any source whatever.
Q. Do you state with the same certainty that you never have done any act as a director of the Chicago and Great Southern Railway Company?
A. Yes, sir.
Q. Do you state that unequivocally?
A. Yes, sir.
Q. Examine that paper (handing letter to witness) and state whether the entire letter, together with the signature thereto, is not in your handwriting?
A. That is my letter; yes.

Solicitor for complainant offered in evidence the letter identified by the witness, which is hereto attached, marked "Exhibit F," and is as follows, to wit:

"Law Office of Henry Meiselbar, [room] 70, 181 La Salle street,

"CHICAGO, *June* 4, 1883.

"H. Crawford, Esq., pres't C. & G. S. R'y Co.

850 "DEAR SIR: I hereby tender my resignation as director of the Chicago and Great Southern R. R. Co., and hereby notify you that I disaffirm and repudiate all and singular my acts and doings as such, on the ground that I have never, either directly or indirectly, received any consideration, either pecuniary or otherwise, for the original stock subscription as evidenced by the articles of association. Neither has any stock been issued or tendered or any consideration paid by me, as there was an understanding at the time of the subscription by all subscribers that they would never be called upon to pay any assessment thereon whatever, and that such subscriptions were merely colorable. Wherefore I hereby request and demand that such stock subscription be rescinded and cancelled as against me by order of the board of directors, upon your request.

"Please advise that this has been done accordingly, and oblige yours, respectfully,

"H. MEISELBAR."

Redirect examination by Col. COOPER:

Q. Does the reading of this letter refresh your recollection as to the Chicago and Great Southern matters—as to your connection with it in any way?

851 A. It does not refresh my recollection to the extent that I was present at any meeting. I cannot yet, doing my best—I cannot recollect that at any time I was present at any meeting. I always considered myself as having no interest whatever, or in way, in the Chicago and Great Southern.

Q. Did you write another letter to Mr. Crawford about the same time?

A. Yes, sir.

Q. Have you got a copy of it?

A. Yes, sir.

Q. Have you got it before you?

A. Yes, sir.

Q. Is it a letter-press copy?

A. It is a letter-press copy; that is the only letter-press copy I have got.

Q. Was that sent at the same time that this was? (Referring to "Exhibit F.")

A. I don't know as it has been sent; I don't recollect of ever sending it.

Q. Is it the same date?

A. It bears the same date, June 4, 1883.

Q. Do you remember of Mr. Crawford ever replying to either of them?

A. No, sir; he never replied; I never got a reply to this one, to my certainty.

Q. You mean the other one of which you have a letter-press copy?

A. Yes, sir.

Q. That bears the figure 3 in ink, the letter-press copy; what was the year?

A. 1883.

Solicitor for defendants offered in evidence the letter referred to, marked "Exhibit G," which is as follows, to wit:

852 "JUNE 4, '3.

"H. Crawford, Esq.

"DEAR SIR: I desire to advise you that I have this day notified Asa B. Kile, as pres't of the Chicago & Dyer R. R. Co., that I requested of him to notify the board of directors of such Co. that I tender my resignation as sec'ty of said Co. and director, and likewise repudiate and disaffirm all and singular my connection in any way with said Co., on the ground that my subscription to the capital stock thereof was made under duress without consideration and in fraud of the sovereignty of the people of [the] State of Illinois; that the same was simply colorable and in evasion of the law of Illinois; that there was a tacit understanding at the time of such subscription between all subscribers that the board of directors would never call upon them to pay any amount thereon; neither has such call been ever had; that such corporation had never for a single moment any corporate or legal existence, and if it had its powers and franchises have ceased to exist. I requested him further that he should submit to said board my demand that such subscription be considered cancelled and rescinded by me. I do so advise you out of courtesy to yourself.

"Yours, H. MEISELBAR.

"P. S.—I shall take similar steps in the C. & I. A. L. R'y Co.
853 by advising Judge Kent as president. H. M."

Q. Did you keep a copy of this in your letter-book—of the last letter read?

A. Yes, sir.

Q. Did you of the other?

A. I have no copy of it in my letter-book.

Q. Do you now know whether you ever saw this record-book prior to last Saturday?

A. I have no recollection of ever seeing that book before last Saturday.

Q. Prior to June 3, 1883. I believe you testified that some time prior to June 3, 1883, you had been with Mr. Crawford for a long time.

A. Prior to that, yes.

Q. What was the occasion of writing these letters at that time, do you remember?

A. The occasion was this: Several parties desired to bring writs of *quo warranto* against the Chicago & Dyer Railroad Company and the Chicago and Indianapolis Air Line Railroad Company. I drew up the petition for leave in this State, and also an information for the State of Indiana, and those papers were submitted to a certain lawyer here in the city, who took them home Saturday night, read them over Sunday, and pronounced them good, and that the charter would judicially be forfeited. He gave that as his legal opinion. Then in order to get myself out of the way I wrote this letter.

Q. That is the last letter read.

A. The letter-press copy letter.

Q. The one with reference to the Chicago & Dyer Railroad Company?

854 A. Yes; and in which there is a reference to the Chicago & Indianapolis Air Line Railroad Company; there was not a word said about the Chicago and Great Southern at that time by anybody.

Q. What do you mean in this letter, the one about the Chicago & Dyer road, of which you have read the copy, your subscription having been made under duress—that is, that you became a director under duress?

A. Yes, sir.

Q. What do you mean by that?

A. Mr. Crawford handed me a paper to sign; he said, "You must sign that," and I signed it.

Q. What relation did you sustain to Mr. Crawford at that time?

A. I was Mr. Crawford's short-hand writer, attending to his general business in the office.

Q. And you signed it because he directed you, as your employer?

A. Yes, sir.

Q. Do you now remember as to whether you ever signed any paper in connection with the Chicago and Great Southern?

A. I don't know of any paper; I cannot recollect of any, to save me. Since I saw that record-book on last Saturday I have been thinking over this matter seriously at all times, and I cannot recollect of any time that I had anything to do with the Great Southern.

Q. Did you have any talk with Lacey at the time he was in Mr. Crawford's employment, and when he was secretary of this company, or a director of this company, about your signature?

855 Objected to by solicitor for complainant as not proper redirect examination, and as incompetent testimony.

A. My recollection is that Mr. Lacey some time during the year 1884, while Mr. Crawford and the company's office were in the Montauk block in this city, told me that he knew of papers and saw them, where Mr. Crawford had signed my name to papers in Indiana, and signed his name to others.

Mr. Pierce: Mr. Meiselbar, when did you take this letter out of your letter-press book?

A. I took that letter out this morning.

Q. You tore it out this morning, did you?

A. I tore it out this morning; yes, sir.

Q. Why didn't you bring the letter-book along with you instead of tearing the letter out?

A. I just tore it out as a matter of curiosity.

Q. As a curiosity?

A. As a matter of no consequence, to show it to Col. Cooper.

Q. And seeing that letter written June 4, 1883, didn't serve to refresh your memory about this letter to Mr. Crawford?

A. Not a particle.

Q. Did you keep any copy of this letter?

A. No, sir.

Q. Are you sure of that?

A. I am sure of it; yes, sir.

Col. Cooper: On account of what was it that you took it out of your letter-book—any conversation with Mr. Pierce?

A. While sitting here yesterday afternoon I casually heard, 856 or thought I heard, Mr. Crawford remark to Mr. Pierce that I had resigned as director, and then I looked in my letter-book to substantiate my recollection of the matter that I had nothing to do with the road. I looked in my letter-book this morning and found those papers in them, and those are the only papers in there in reference to this.

Q. Did you not tell me with reference to this last letter this morning, before the examination, and show me the copy which you have?

A. Yes, sir; this is a matter of no consequence or importance whatever.

Mr. Pierce: When was it yesterday that you heard Mr. Crawford tell me that you had resigned as director?

A. I thought it was yesterday afternoon; I thought I heard it.

Q. During the progress of the examination or afterwards?

A. I cannot tell that now; it was some time yesterday afternoon. I thought I heard Mr. Crawford say so.

Q. When and where was it?

A. Here in the office; it seems to me after Mr. Lyon testified.

Q. After Mr. Lyon testified?

A. It seems to me so.

Q. Where were Mr. Crawford and I at the time?

A. Mr. Crawford was sitting down in the chair where he is sitting now, and you was bending over listening to what he was saying. I thought I heard it.

Q. And that was after Mr. Lyon had been examined?

A. Yes, sir.

857 Q. Was that before you were examined?

A. It was after.

Q. And after you had been examined?

A. That was after I had been examined; yes, sir.

Q. Pretty late in the evening, was it?

A. No, I was examined first and then Judge Lyon; no, it was not late.

Q. What time of day was it?

A. Mr. Lyon was here about one o'clock.

Q. About what time of day was it you heard that conversation?

A. It seems to me it was about one or a quarter past one.

Q. Now tell the reporter once more what you heard Mr. Crawford say to me.

A. I thought I heard Mr. Crawford say to you that I had resigned as a director; I thought I heard him say that.

Q. That you had resigned as a director?

A. That I had resigned as a director; yes, sir.

Q. You heard that?

A. That is the reason I looked this morning in the record-book to show Col. Cooper it was the Chicago & Dyer and the Air Line railroad, and not the Great Southern.

Q. Where is your letter-book?

A. It is up at the office.

Q. I will ask you to bring that in during the day.

A. All right; I will.

(The witness retires and afterwards returns, bringing his letter-book.)

858 Mr. PIERCE: Mr. Meiselbar, you have your letter-press book here with you, have you?

A. Yes, sir.

Q. This is it on the table, is it?

A. That is it; yes, sir; that is the book.

Q. This letter introduced by Col. Cooper, which you say was torn from that letter-book, bears the imprint of being page 32 of the letter-book, does it not?

A. Page 32; yes, sir.

Q. Now, what does your letter-book show about the pages preceding that, from page 18 up to page 32?

A. The letter-book shows that the pages have been cut out.

Q. From page 18 up to page 32—that is, from 19; 18 is here.

A. From 19 to 32 are cut out; yes, sir.

Q. They are gone?

A. They are gone.

Q. You haven't got them?

A. I haven't got them; no, sir. I want to explain why they are out.

Col. COOPER: Do you know how the leaves of the letter-book from page 18 to 31, inclusive, are gone from the book?

A. Yes, sir.

859 Q. How?

A. Mr. C. R. Adams, a young attorney, in the city here, at room 70, 161 La Salle street, used my letter-press book to copy his letters in, and I was there one month, at room 70, 161 La Salle street; to my best recollection now, one month, and when I quit there Mr. Adams, before me, took out his pocket knife and cut them right out; I consented to it; I don't know as I looked to see just exactly the number of pages he did cut out, or whether it was between page 18 and page 32, or any other number; I never looked;

he simply cut them right out, and what he did with the papers since then I don't know; I have never spoken to him since then; I didn't know they were cut out until I looked at it this morning—that is, I didn't know from that time to this; I hadn't thought of it until this morning.

Q. That is, you didn't know these particular pages were cut out?

A. No, sir; I did not.

Q. Is Mr. Adams here?

A. Yes, sir.

Q. Do you know where his office is?

A. Yes, sir.

Q. Where is it?

A. Room 25, 156 Washington street; I met him the other evening, and he told me he had moved to Washington street.

Q. Will you try and get him in here this afternoon?

A. Yes, sir.

Q. Why didn't you bring the letter-book in this morning, instead of the sheet cut out of it?

A. I didn't think anything about it; I didn't think it was necessary.

Q. You showed me the letter-press this morning, did you not?

860 A. Yes, sir; I did.

Q. Before the examination?

A. Before the examination; yes, sir.

Q. And stated to me that you had understood Mr. Crawford to say that he had a letter showing that you had resigned as director of the company?

A. As director of the company; yes, sir; I understood Mr. Crawford to say that.

Q. Then what you did resign as was simply as a director of the Chicago & Dyer Railroad Company?

A. Yes, sir.

Q. And you brought that letter-press copy in to show me?

A. Yes, sir.

Q. Had these parties notified you before that time that they were going to put you on the stand?

A. No, sir.

Mr. Pierce: I want these two original letters to be attached to the testimony.

861 W. G. McMillan, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. Cooper, and testified as follows:

Q. State your name, residence, and occupation.

A. My name is W. G. McMillan. I am a lawyer; residence, 24 Delaware Place, Chicago.

Q. In the year 1884—last year—did you, amongst others, represent the Cleveland Rolling Mill Company as an attorney here in Chicago?

A. Not with others. I represented the Cleveland Rolling Mill Company.

Q. I mean, among other clients, you represented the Cleveland Rolling Mill Company?

A. Yes, sir.

Q. Did you have a claim against the Chicago & Great Southern Railway Company in your hands for collection?

A. I did.

Q. How long did you have it?

A. I got it, I think, during the holidays of 1883 and 1884; it was put in my hands as a claim on behalf of the Cleveland Rolling Mill Company against the Chicago & Great Southern Railway Company for rails furnished.

Q. By whom to whom?

A. By the Cleveland Rolling Mill Company to the Chicago & Great Southern Railway Company.

Q. Did you ever see Mr. Crawford with reference to the matter?

A. I did.

Q. When; at what times did you see him during that period?

A. Well, at the March term of the United States court. I will say I tried to see Mr. Crawford before that time, but I was unable to do so. 862 I don't think I ever had an interview with Mr. Crawford until after I had begun a suit in the United States court here, at the March term, 1884.

Q. On that claim?

A. On that claim, and the declaration was filed at the April term, and default was entered May 10, I believe, or the May term, on account of a lack of filing any plea.

Q. Did you ever present the bill to Mr. Crawford?

A. Never prior to the time that I begun the suit.

Q. Did you after the time you begun the suit?

A. I never presented a bill to Mr. Crawford, but I had an interview with him just about the time that default would ordinarily have been entered. It was not entered on default day.

Q. What, if anything, did he say about the claim—about the correctness of it?

A. The morning that default would ordinarily have been entered—at least on default day—Mr. Crawford came to my office at 94 Washington street at that time, and he told me he was negotiating for a sale of his road—negotiating with Mr. Porter, with Mr. Marshall Field, and I think he mentioned Mr. Byron Smith, of this city; that a judgment entered——

Solicitor for complainant objected to all testimony of this witness as to what Mr. Crawford said to him.

A. This interview occurred prior to ten o'clock on the morning of default day of the May term of the circuit court of the United States; that part I can remember. What that date was I 863 don't know, and Mr. Crawford told me he was negotiating for the sale of his road, and that the creditors would be taken care of, and that if I entered judgment at that time it would tend to hinder any negotiations that he had on hand at that time. He told me that he had an interview with Mr. Porter, I think, that day, at 11 o'clock, and that he would see me in the afternoon—no, not that he would see me in the afternoon; he said he would try to, but that several people would probably be present and the negotiations rather long, and he might not be able to see me until the next morning; I told him I had no authority from my own client to delay a judgment by default, and that if I could see Mr. Porter I would do so—I would delay it. He preferred that I should not see Mr. Porter at that time, but he would either see me or send me a note in the afternoon. To the best of my recollection, Mr. Crawford did not see me that day, and I will not say positively whether I wrote him a note or whether he wrote me a note the day after, but my desire was to see Mr. Porter. I don't think I saw Mr. Porter, however, before I entered judgment, preferring not to run any futher risk in the matter.

Q. What I want to ask you is this: whether you ever talked with Mr. Crawford about the correctness of the bill of the Cleveland Rolling Mill Company—about the amount and the corretness thereof.

Solicitors for complainant objected to everything that passed between this witness and Mr. Crawford.

864 A. I don't think I ever had any conversation directly with Mr. Crawford in regard to the absolute amount of that claim; the declaration had been filled with a stated account in the United States court prior to the time I saw Mr. Crawford, and as to the absolute amount I don't think I ever——

Q. What, if anything, did he say about the claim of the Cleveland Rolling Mill Company?

A. He simply said he wanted to pay it, and would pay it as soon as he succeeded in fixing or in completing these negotiations for the sale of his road.

Q. Did he say anything about the defense of the company to the claim?

A. Nothing whatever; they defaulted; he didn't say they defaulted, but he knew that; he said he had no defense to make, and asked me not to enter judgment.

Q. Have you got an itemized statement of the account?

A. I haven't got it with me. I went to the United States court this morning to get the itemized statement of account, at least that filed with the declaration, but was unable to withdraw it from the files, the clerk not allowing me to, and Judge Blodgett being occupied I could not get his ear. I did, however, take from the files a copy of the statements, which are there.

Q. You can swear to them as copies?

A. I will swear to them as being copies of those on file with the declaration, and those handed to me by the Cleveland Rolling Mill Company. (Witness produces statements.) Those are in a general way the amounts of each.)

865 Q. And judgment was entered upon these?

A. Judgment was entered upon them May 10, 1884.

Q. For how much in amount?

A. For $35,922 and some cents; the cents of the judgment I do not remember.

Q. Did you afterwards see Mr. Porter?

A. I did.

Q. When and where?

A. I saw Mr. Porter at his office on, I believe, May 19, 1884; I am very sure that is the date; I can tell by referring to my letter-book.

Q. What took place between you and Mr. Porter?

A. At that conversation with Mr. Porter I asked him in regard to his purchasing the road, and, as I have understood—I suppose this is not evidence, what I have understood—that Mr. Field and others were going into it, but I saw Mr. Porter——

Mr. Pierce: You know what is a proper answer and what is not; give us the facts.

A. I saw Mr. Porter at his office on the date, as I believe it to be, May 19, 1884, at his office, and I had a conversation to this effect: I told him about my claim, the claim in my hands against the Chicago & Great Southern Railway Company and in favor of the Cleveland Rolling Mill Company. I told him of this claim; told him I had seen Mr. Crawford, and that Mr. Crawford had told me that I could see him; he requested me to do so, and I asked him whether he was really going to purchase the road. If I remember rightly, there was considerable of a panic in New York in regard to stocks and so forth, and Mr. Porter said he was not sure whether
866 they would carry out the scheme of purchasing the road or
not, but he said, "If I have anything to do with it a trustee will be appointed to receive the purchase-money for that road; the creditors will file their claims with that trustee, and they will be paid before Henry Crawford gets a cent." As I remember the language it is almost exactly that in fact. I afterwards saw Mr. Porter at the Union Club one evening, and had a conversation with him there in which he told me he doubted, owing to the financial troubles in New York and the close times, it was doubtful whether the scheme would go through; and at that time he told me—he said: "Mr. McMillan, if I take any interest in this matter and take it through, I shall carry out the idea of seeing that the creditors are paid, but in the absence of my being positive in regard to this I advise you, if you see anything to jump on with an execution, to do it." He advised me to act if I saw anything to act on at that time.

Col. Cooper: Did you see him afterwards?

A. I don't think I have ever had any conversation with Mr. Porter in regard to the matter since that time.

Solicitor for complainant offered in evidence the statements produced by the witness, marked, respectively, Exhibit H and Exhibit J.

Solicitor for defendants also offered in evidence letter from Stubbs

& Runyon, dated Chicago, October 10th, 1881, which is hereto attached and marked Exhibit L.

Cross-examination waived.

867 The signature of the witness to the above deposition was waived by agreement of counsel.

CORNELIUS R. ADAMS, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. MEISELBEAR, and testified as follows:

Q. What is your name and residence?
A. Cornelius R. Adams; 37 Park avenue, Chicago.
Q. Where was your office, Mr. Adams, during the month of May, 1883?
A. It was in room 70, 161 La Salle street, I believe.
Q. Did anybody office with you?
A. Yes; you were officing with me at that time.
Q. Did you ever see that book before (handing to witness letter-press book produced by Mr. Meiselbar)?
A. I could not swear that I have; no, sir.
Q. Did you have a letter-book of your own at that time?
A. No, sir; I did not.
Q. Did you use my letter-book?
A. I could not swear that I did; I might have done so, but I don't remember whether I did or did not; my impression is that I did use it.
Q. Whose handwriting is that on pages 397 and 698, the last two pages of the book?
A. That is my handwriting.
Q. Is that your handwriting on page 328?
A. I should say it was; it is so blurred I can hardly say.
Q. Does it look like your signature?
A. It looks like my signature. Yes; I should say that was
868 my handwriting, but I am not positive.
Q. And on page 329, is that yours?
A. Yes; that looks like my handwriting.
Q. And on page 330, could you recognize that?
A. I could not recognize that.
Q. Look at page 327 to page 331 of this letter-book and state whether any leaves are missing there.
A. (Witness examines book.) No, sir; I don't see any missing.
Q. Did you do considerable letter-press copying during that month—the month of May?
A. Not very much. No; I did not.
Q. Have you any recollection, Mr. Adams, of using any leaves in the book or the book itself for letter-press copying?
A. No; I have no recollection. I may have done so, but I don't remember, it is so long ago.
Q. Will you look amongst your papers to find out whether you have leaves cut out from this book, from page 19 to page 33?

A. Yes.

Q. Where are your papers?

A. They are at 37 Park avenue.

Q. At your house?

A. Yes, sir.

Q. When will you look those papers up?

A. I will get them to-night, if I have them.

Cross-examination by Mr. HENRY CRAWFORD:

Q. Mr. Adams, have you the slightest recollection in the world of ever cutting a leaf out of that letter-book?

A. Well, I have a slight recollection; yes; it is very slight, but I think I cut some out.

869 Q. For what purpose?

A. Well, I could not state. I suppose I cut them out because I took an impression of some letter or paper and wanted to preserve it myself; the book belonged to Mr. Meiselbar, and I hadn't any book.

Q. Have you any distinct recollection of any single paper of that kind?

A. Well, I have some recollection of making impressions and taking a letter-press copy of some papers.

Q. They are still in there, are they not?

A. I don't think they are; if I took any impressions I would be apt to cut them out, because it was not my book.

Q. Is there not some of your handwriting in the last part of the book? I understood you to say so.

A. Yes; there is some of my handwriting there.

Q. You did not cut them out?

A. My impression is not very distinct, I think.

Q. There are some further along towards the front of the book, page three hundred and something?

A. I don't know.

Q. Wasn't it your habit in using the book, whatever use you made of it, to use it in a different part from what the owner of it was using it?

A. I should presume so.

Q. When did you leave the office of Meiselbar?

A. Well, I rented the office myself; Mr. Meiselbar was renting desk room of me.

Q. When was the separation?

A. I think that he left the office there on the 1st of June, 1883.

Q. Did you, when you left the office—did you proceed to 870 cut out continuously ten or 12 pages of that book?

A. No, sir. I think I should have cut them out at the time I took the impressions if I cut them out at all.

Q. Have you any recollection of using the front part of the book that was being used by the owner of it?

A. I haven't any distinct recollection of it; no, sir.

Q. And you did use the back part of the book, didn't you, for some purposes?

A. I did, evidently, because my writing is in there.

Q. And it is not cut out?

A. No, sir.

Q. And that is so in several places, isn't it?

A. I presume it may be.

Q. What were you told you were desired here to-day for?

A. Mr. Meiselbar asked me if I had not used the letter press and hadn't cut out some leaves there; he asked me if I didn't recollect that I had used it.

Q. Did he tell you what leaves?

A. No; I don't think he did.

Q. Did he tell you how many?

A. No, sir.

Q. Did he tell you when?

A. Yes; he asked me if I didn't use the leaves when I was in the office with him.

Q. When you cut them out?

A. No, he didn't ask me that.

Q. You would have remembered, wouldn't you, any such event as tearing out or cutting 11 or 12 leaves?

A. No; I don't know as I would.

Q. At one time?

A. I might and I might not.

871 Q. Do you now remember of ever cutting out a single leaf in the first portion of the book there, where it was being used by the owner?

A. No, I have no positive recollection of cutting any out.

Q. Look at that book, from the pages wherever they begin down to page 18, and state in whose handwriting each continuous page is—whether it is in yours or the owner's.

A. That is all in Mr. Meiselbar's.

Q. Every page, isn't it, in the first part of that book?

A. Yes, I should say; it is not mine.

Q. What is the date of the last page that is left in the book—the date of the letter before the part where the leaves are cut out?

A. It is December 2nd–2; I suppose it is meant for 1882; I don't see anything only the figure 2.

Q. And up to that time there is not a single thing in your handwriting in front, is there?

A. No, sir; there is not a single thing in my handwriting up to that time.

Q. When is the next that appears in your handwriting in that book?

A. I will have to go all through the book, sha'n't I?

Q. Yes; up to that page you have turned to where there appears to be a gap. What page is that?

A. Page 45.

Q. Now, on the pages in the book from where it begins to page 45, is there a single thing in your handwriting?

A. No, sir; not that is in the book here.

Redirect examination by Mr. **Meiselbar**:

Q. Mr. Adams, do you find any other page missing there
872 in that book besides the leaves from 18 to 32?

A. No, I haven't found any missing.

Col. **Cooper**: I understand you to say you have an indistinct recollection of having taken out some pages?

A. Yes; I know I had a case for some parties of the name of Flint & Deidrich, in the superior court, and I took an impression of some affidavits I drew up, and I can't state whether I took a copy of them in that book or whether I got separate leaves from the stationery store and took an impression on them; I have the papers, I think, at my house.

Mr. **Pierce**: If you have taken any pages out of there you have them in your possession?

A. I think I have, without any question.

The further taking of testimony was then adjourned to Saturday, November 7, 1885, at 11 o'clock a. m.

873 Saturday, *November 7th*, 1885.

Parties met pursuant to adjournment at 11 o'clock a. m.

Cornelius R. Adams, being recalled for further examination, was examined in chief by Mr. **Meiselbar**, and testified as follows:

Q. Mr. Adams, on yesterday you said you would look up certain papers at your house; have you done so?

A. Yes, sir.

Q. Have you those papers with you?

A. Yes, sir.

Q. Where are they?

A. They are in the hands of that gentleman there (indicating Mr. Pierce).

Q. Give the pages.

A. (Witness refers to papers.) Pages 19 to 29 consecutively, both inclusive.

Q. Are those all the papers you found?

A. That is all I found; yes, sir.

Q. State how you got possession of those papers.

A. Well, I copied them before you, with your permission, in your letter-book and cut them out with your permission.

Q. When was that?

A. That was in May, 1883, I believe; in May, 1883, while you were in the office in room 71, 161 La Salle street.

Q. Do you recollect of writing any letters and copying them in the book in connection with those papers?

A. I recollect copying some other papers, but I could not tell whether they were letters or parts of affidavits, or what they were. I recollect making other copies, though.

874 Q. Have you thoroughly looked everywhere to find any other papers besides the papers produced this morning?

A. Yes; I have looked through all my papers, and I do not find any other papers.

Q. State the nature and the character of the paper embraced in those pages.

A. It is an affidavit of myself in a certain case that I was interested in.

Q. Anybody else's affidavit?

A. Yes; there is an affidavit of Thomas L. Kempster.

Q. Who did you represent in that case?

A. I think there were two or three plaintiffs, and I cannot tell just what plaintiff I did represent. I was interested with Mason Brothers, and one of the plaintiffs was Mr. Krisman, of Denver.

Q. Where did your client reside in that case?

A. In Denver, Colorado.

Q. Did you have any occasion to correspond with them in reference to the case?

A. Yes, sir; I did.

Q. Do you recollect corresponding with them with reference to this affidavit?

A. Yes; I corresponded with their attorney there.

Q. Were you in the habit of taking letter-press copies of your correspondence at that time?

A. No; I was not.

Q. Have you any recollection of taking a letter-press copy of the letters written in reference to those affidavits?

875 A. No; I haven't any recollection of taking a letter-press copy of any letters.

Q. Do you recollect writing any letters about it?

A. Yes, sir, I do; just as I have stated before, I may have done so, but I don't recollect. I know I took copies of other papers, but whether they were letters or affidavits, I could not state.

Q. At the same time you took letter-press copies of those?

A. Yes, sir.

Q. You have looked everywhere to find those papers, have you?

A. Yes, sir.

Q. And you cannot find them?

A. I cannot find them.

Cross-examination by Mr. HENRY CRAWFORD:

Q. I ask you to produce and leave with the examiner the original of those pages cut from the letter-book; will you do so?

A. I can leave these, yes.

Q. Mr. Adams, did you ever, to your recollection, cut out any leaf whatever, except at the one time, and those which are now upon the table?

A. I haven't any positive recollection, but I know I took other impressions.

Q. I am not asking about that, sir; I am asking you whether you ever cut any leaves out of that book?

A. I haven't any positive recollection of doing so.

Q. I call your attention now to a dim impression which appears upon page 29 of the leaf of the letter-press book, and I ask you to compare it with the second page of the letter intro- 876 duced in evidence yesterday (Exhibit F), and state whether that does not show that there is a dim impression of the second page of that letter.

A. Well, it is so indistinct that I cannot state whether it is or is not.

Q. Isn't that first word "upon" there? "To," "pay," "any," "assessment," "thereon," "whatever," "and," "that," follow it up; "I hereby request," follow it up. "Please," "advise."

A. Yes, some of those letters appear there.

Q. Isn't that your best judgment, that that is a dim impression of the second page of that letter, sir.

A. I should say it was my judgment that it was, but I could not swear positively that it was.

Q. Therefore it must necessarily have been, must it not, that on page 30 was a copy of that letter?

A. No, sir; not necessarily, because I might have cut it out before he took the impression on the next page.

Q. How could it get there then?

A. Because I might have cut out other letters. They might have been cut out.

Q. How could an impression get on there unless it had been in the letter book and pressed? Come now.

A. I don't know.

Q. Could it? Isn't it a physical impossibility? Hadn't the second page of that letter (Exhibit F) been copied on page 30 of that letter-book before you cut that out, sir?

A. Well, I should think that, without considering the matter very thoroughly, *that* the pages might have been cut out, 877 and then this letter copied and been impressed upon the back there, I should think.

Q. State that again.

A. I said I should suppose those pages there might have been cut out——

Q. Before?

A. Yes, sir.

Q. When they were cut out didn't it go into your possession and go out of the letter-book?

A. Yes, sir.

Q. Then how could that get on there?

A. The impression might have been there, I should suppose, before those leaves were cut out.

Q. That is what I am asking. Then that impression could only have gotten there, could it not, from absorbing it from page 30?

A. I don't know which page that was copied onto. Probably it was absorbed.

Q. That is the next page, isn't it?

A. It would be the next page in the number.

Q. It is the next page to that, whatever it would be, isn't it?

A. Not necessarily, I don't think. It might have been page 35 or 45.

Q. Do you mean soaked through?

A. No, I don't mean that. They may have been cut out.

Q. I understand that; I say the succeeding page?

A. I don't know what page it was on.

Q. It was on the next page that was in the book, wasn't it?

A. Whatever page it was copied onto; I don't know what page that was.

878 Q. I say the next page in the book succeeding this must have had a copy?

A. I tell you I don't know; it might have been cut out. I don't know whether it is on the next page or the 45th page.

Q. If the 46th page was the next?

A. If it was the next page to it; yes. I should say so.

Q. It was copied in that book before you cut it out, wasn't it?

A. It must have been. It never was impressed after I took it out.

Q. And you haven't got pages 30 or 31, have you?

A. No, sir; I cannot find them anywhere; I have looked to the best of my ability and I cannot find them.

Q. You didn't cut out any of Meiselbar's letters—copies of any?

A. No, sir; I didn't cut out any of his letters.

Solicitor for complainant offers in evidence the letter-book produced by the witness, Henry Meiselbar.

HENRY MEISELBAR, being recalled, made the following statement:

I will state that on yesterday, when this letter was handed to me, and I was asked as to whether that was my handwriting, I instantly said it was my handwriting, and it is my handwriting. But the next question was to me whether I took a letter-press copy of that. I simply looked on the front page of this letter; I don't remember whether at the

879 time I had it in my hand, or whether Mr. Pierce had it in his hand. Simply looking at the front page, I thought it looked as if it was not letter-pressed, and I answered I thought it was not letter-pressed. I never looked on the next page, on the back of the letter, nor have I at any time whatever since the letter in the air-line matter and the Dyer matter and this have been written ever looked at my letter-book until yesterday morning, shortly before I came here, or to Col. Cooper's office. As I said yesterday, without looking at the preceding pages at all, I tore the Chicago & Dyer letter, which has reference to the air-line matter, out of the book, right at the top, and tore it down, without a ruler, or without cutting it out with a knife—tore it out and put it in my vest pocket. I did not at any time examine the paper, the missing leaves of the book, as produced by Mr. Adams this morning until my attention was called to that on the back; this letter apparently is copied in that book. I cannot now account for those missing pages in the book, but they were cut out, and in some manner or other, I

don't know how, those pages are missing; I cannot account for them. I don't know what was on page 30 copied in the book, but I am satisfied now that I did write this letter, and on the same date; but I will further explain why I did write that letter. I was requested to write the Dyer and the air-line letters, and did so. At the same time, in order to get rid of any and all connection with Mr. Crawford, and acting upon the information I had thereto-
880 fore obtained, when Mr. Crawford's offices were in the Mon-
tauk Block—he moved there in 1883, and I heard there that my name had been used some, how many times I don't remember, in Indiana; that I had never seen the papers; did not sign any papers, but my name had been appended to those papers by Mr. Crawford, and I had been informed by one certain party, and perhaps several others, and those same parties told me that their names were used by Mr. Crawford; in other words, that Mr. Crawford forged their names—and after the agitation which came about through this surprise party, I thought over the matter, and my only theory of recollection is that I wrote that letter for the purpose of getting rid of any connection whatever with the Great Southern. I don't know whether I was informed at that time that my name was being used as a director or not, but I must have concluded that inasmuch as I was an officer of the company, or I should have known it positively, that I must be a director; because my name could not be individually signed to any papers.

[On margin:] See page — for correction of this answer—John Gray, special examiner.

Col. Cooper: Isn't this about the truth of it, as to the materiality of this evidence, that at some time or other, which you had forgotten at the time you first saw this record-book on Saturday, you had been informed that you were a director, and you had forgotten it? Don't you think that is a fair statement of the situation? I do, at least.

A. I don't know, Colonel, that I was ever informed in terms
881 that I was a director, but I knew about these matters gen-
erally, and I must have been a director, or my name could not be used. I never was informed in terms by anybody.

Q. Wasn't it in Mr. Crawford's enterprises, the headquarters of which he had there in his offices—wasn't it generally true that the gentlemen who were there with him as clerks, associates, and so forth, were generally his directors—that is, in the Chicago & Dyer matter, in the Indianapolis Air Line matter, and in the Chicago and Great Southern; isn't that so?

A. Yes, sir; that is true.

Q. There were three of them, weren't there?

A. Yes, sir.

Q. Three companies whose headquarters were generally about Mr. Crawford's office?

A. Yes, sir. I will further state that I was on the friendliest terms with all the young men in Mr. Crawford's employ there, either in his office or outside, and I used to know what was going on. I knew Judge Lyon very well; Mr. Lacey very well—the best of friends; Mr. Worden very well. I was on the same floor there.

JOHN W. SWAN, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. State your name, occupation, and residence.

A. My name is John W. Swan; my residence is Union township, Benton county, Indiana; occupation, farmer.

882 Q. How long have you resided in Union township, Benton county, Indiana?

A. Since the 22nd of May, 1857.

Q. Are you a tax-payer, and have you been, there?

A. Yes, sir.

Q. For how long?

A. Ever since 1856.

Q. Do you remember about the time that the vote was taken in Union township, Benton county, Indiana, for a subscription to the stock of the Chicago and Great Southern Railway Company or the Chicago and Indiana Railway Company?

A. Yes, sir; we voted on the 23rd of May, 1880.

Q. Do you remember how much you voted?

A. We supposed it would make about $10,000, 2 per cent.

Q. On the assessment?

A. On the assessment. Our land was assessed in 1875, I believe, and we supposed from that assessment that the next would be equal to it, and it would make about $10,000.

Q. Do you remember about the date of the first levy made in your township in aid of this railroad company and the subscription to its stock?

A. Our commissioners met the first Monday in June, September, and March I believe, December, and it was made at our June session.

Q. In 1880?

A. In 1880, yes, sir; I could not say what day.

Q. Do you remember when you paid your first assessment on account of this?

A. There was some work done in 1880, but not enough to make
our tax become due, but there was enough against—; we paid
883 our taxes in November, in 1881, I think. I think we paid
our first in 1881.

Q. Did you personally pay your first tax in 1881 some time?

A. I think I did.

Q. Do you remember about what time the county commissioners subscribed for the first shares of stock on account of the aid voted in Benton county, and the subscription; do you remember the time that was done?

Solicitor for complainant objected to the question because it is a matter of record.

A. I think it was done at the December term, in 1881.

Q. Were you ever a director of the Chicago and Indiana Railway Company?

A. I was a director from May; some time in the month of May, 1881, to the 15th of March, 1882.

Q. In the meantime the name of the company had been changed, hadn't it?

A. Yes, sir; it was changed at the request of Mr. Crawford.

Q. At the request of Mr. Henry Crawford?

A. Yes, sir.

Q. To what name?

A. Changed from the Indiana & Chicago Railway Company to the Chicago and Great Southern Railway Company.

Q. Do you remember about the time that was done?

A. I think it was done perhaps in August or September, 1881.

Q. Did you have any stock in the railway company?

A. I had $50; one share.

Q. Who had the controlling stock on the 23rd of June, 1881?

A. I think that Mr. Foster had the controlling stock up
884 to the time that he sold to Mr. Crawford; I don't know the
exact date of that, but it was the latter part of June or the
first of July, 1881.

Q. A contract has been introduced in evidence here between William Foster, in behalf of himself and associates, and Henry Crawford, bearing date June 23, 1881, and signed by William Foster and Henry Crawford, introduced in evidence as "Exhibit C." Will you look at that and see whether you recognize that contract?

A. I was reading that this morning. That is the contract as shown by Mr. Foster to us after that sale, or about the time of the sale.

Q. That is about the time of the sale of this stock to Mr. Crawford?

A. Yes, sir.

Q. Did you assent to the terms of the contract verbally?

A. I think we did.

Q. All the members of the board of directors?

A. Yes, sir.

Q. After that contract was entered into, namely, on the 23rd of June, 1881, what did Mr. Crawford have to do with the Chicago and Great Southern Railway Company?

A. Well, the same board of directors remained, with Mr. Foster as president, and at each of our meetings, or nearly every meeting, we received some suggestions from Mr. Crawford, some request, some things that he wished us to do.

Q. Did you comply with those requests?

A. I think that we complied with all requests, excepting one,
which he made us. As far as I knew the board, we complied
885 with all except one.

Q. What was that?

A. He wished us to enter into a contract with him by which he was to be a party to construct more of the line. We rejected that request; we refused it.

886 Q. For what reason?

A. Well, we didn't think it for the best interests of the company; that was the talk at that time.

Q. Do you remember what objections were made to the contract by the board of directors at their meeting in considering the matter?

A. Well, they thought it was too much, and that it would cut the townships out of their stock.

Q. Too much for whom?

A. Too much for Mr. Crawford, the party constructing it.

Q. I wish you would look at the document now handed you, marked "Exhibit B, John Gray, special commissioner," and see whether that was the contract that was offered and which you rejected.

A. I think it is the contract.

Q. Did you have any talk with Mr. Crawford about the matter; did you personally?

A. No, sir.

Q. Did you have any talk about it with Mr. Crawford?

A. No, sir; that was brought in by Mr. Foster, presented to the board at one of our sessions by Mr. Foster, and, I think, read by the secretary, and it was discussed among us.

Q. Is that the meeting that took place on the 7th of February, 1882, as recorded in the record book?

A. I think it was; I am satisfied that was the last meeting we had before we resigned on the 15th of March.

Q. That is, it was the last meeting prior to the 15th of March, 1882?

A. Yes, sir.

Q. I notice that on the 29th of October, 1881, the directors rescinded a former resolution authorizing the execution by the
887 company of bonds secured by deed of trust or mortgage and passed a new one; do you know at whose instance that was done?

A. I could not say positively.

Q. You don't remember about that?

A. No; I could not say positively at whose request it was.

Q. Do you know whether any of those bonds were executed prior to the 15th of March, 1882?

A. I do not.

Q. Do you know where they were?

A. No, sir, I do not; we authorized our president to execute them.

Q. Execute what?

A. Some bonds and a mortgage.

Q. What was done with them you don't know?

A. No, sir.

Q. Were you present at the meeting at Goodland on the 15th of March, 1882?

A. Yes, sir.

Q. State as near as you can what transpired at that meeting.

Solicitor for complainant objected to the question for the reason that the record is the best evidence of what occurred at that meeting.

A. We were summoned there; the directors were all present except Silas Sink and John B. Forsman and a gentleman from Warren county.

Mr. PIERCE: Odle?

A. Odle, yes; from Warren county; I don't know his given name; those three were not present.

Col. COOPER: What time was the meeting held at which the resignation actually took place; what time in the day?

A. I presume it was eight o'clock at night, May 9, when we began business.

888 Q. What time did the directors assemble that day?

A. Well, I left home a little before night; they sent for me, and I went in on a hand-car. When I got there it was nearly dark. I think Mr. McConnell did not come until after I got there.

Q. Do you know in pursuance of what arrangement, if any, the resignations were made?

A. After we assembled and read over the business, Mr. Foster Foster said that Mr. Crawford wished the resignations of the board, and they were tendered according to an agreement that we had with Mr. Crawford at that time; we had signed an agreement, a paper that Mr. Crawford requested us to, that whenever he so desired the board would tender their resignations; that was at the time the sale was made.

Q. That is on the 23d of June, 1881?

A. Yes, sir.

Q. At the time of the sale of fifty thousand dollars of stock?

A. Yes, sir.

Q. And Mr. Foster stated that Mr. Crawford wanted the resignations?

A. Yes, sir.

Q. And did you resign on account of that request?

A. Yes, sir; and I was glad to get out of it.

Q. Did you remain there after your resignation was tendered?

A. I perhaps remained half an hour in another room adjoining. I think as soon as I tendered my resignation I walked out of the room where they were transacting the business and was in an adjoining room; I could not say ast o any further transactions after I went out.

889 Q. What did you do with your stock when you resigned?

A. Mr. Worden came to my house, I think, in February, 1883, and I assigned my stock to Mr. Crawford.

Q. You assigned your share, did you?

A. Yes, sir.

Q. Did he pay you anything for it?

A. No, sir.

Q. Have you ever received anything for it?

A. No, sir.

Q. You don't live near the line of this road, do you?

A. I live two miles from the line—two miles east of it.

Q. Do you know Henry H. Porter?

A. No, sir; I have had him pointed out to me on the train, but I would not know him if I were ever to meet on the street.

Q. Do you know whether any of the bonds had been negotiated, and sold at the time you went out?

A. I do not.

Q. Had you ever been told?

A. No, sir; not that I remember, I have no recollection of being told that there was any sold.

Cross-examination:

Mr. **Crawford**: I want to ask the witness some questions.

Col. **Cooper**: If Mr. Crawford will state for whom he appears he can ask the questions, but he is not a party to this suit.

Mr. **Crawford**: Mr. Crawford appears here for the purpose of protecting himself against unjust assaults and at the request of the counsel for complainant, who knows nothing whatever about the transactions about the date inquired of.

Col. **Cooper**: As to any assaults that have been made on Mr. Crawford, personally, I will waive any objection to the question; as to anything affecting Mr. Crawford's character or the integrity of Mr. Crawford's transactions—— 890

Mr. **Crawford**: The whole attack is nothing but that.

Col. **Cooper**: But as to anything further, as to the merits of this suit, I want Mr. Crawford to define his position and say for whom he appears.

Mr. **Pierce**: It has already been defined. I stated the other day that Mr. Crawford was present here at my request, and would, at my request, examine some of these witnesses.

Col. **Cooper**: On behalf of complainant?

Mr. **Pierce**: For me, at my request.

Col. **Cooper**: You are not a party to this suit.

Mr. **Pierce**: Mr. Porter is a party to this suit; I represent him.

Col. **Cooper**: If Mr. Crawford appears here for Mr. Porter, that is enough; then he has warrant to do what he likes.

Mr. **Crawford**: Mr. Crawford states just what he appears for. I presume the truth is what is desired to be got at in this business.

Col. **Cooper**: Yes; and when we want an *amicus curiæ* for the truth we will select our own. I simply state the position.

Mr. **Pierce**: You make a formal objection to it?

Col. **Cooper**: I make a formal objection to Mr. Crawford asking these questions, and I instruct the witness—I say to the witness—that unless Mr. Crawford asks him as an attorney of Mr. Porter, or attorney of the Chicago & Great Southern Railway Company, one or the other, that he is under no obligation to answer any question. He can refuse to answer. If Mr. Crawford appears here as an attorney for Mr. Porter, or for any of the parties here in this case, he is perfectly at liberty to ask all [the] questions he pleases, and I haven't objected heretofore, but after the transaction of a few moments ago with reference to Mr. Meiselbar I propose to draw the line on Mr. Crawford exactly where the law draws it. 891

Mr. **Crawford**: Mr. Swan, do you refuse to answer the questions which I put to you?

A. Isn't there somebody here to decide whether I shall answer these questions or not?

Col. **Cooper**: I will say this: if Mr. Pierce wants to adopt, as an attorney of the complainant, the questions of Mr. Crawford, each and every question put on behalf of the complainant, I have no objection.

Mr. **Crawford**: Mr. Crawford is not the attorney for the complainant or anybody connected with this lawsuit, and appears here simply because his administration of this property and his conduct has been really made the source of this whole defense, and in common justice and decency and honesty he has a right to interrogate the witnesses about that.

Col. **Cooper**: Nobody knows any better than Mr. Crawford, with all his parade of honesty, justice, and decency, that he has no legal right to ask a question of a witness here except he is a party to the record or appears for some party; the witness can do as he likes about answering the questions.

Mr. **Crawford**: Mr. Swan, after the 23d of June, 1881, and up to the 15th of March, 1882, had there not been a large amount of work done on that railroad? 892

The **Witness**: Can't you gentlemen settle this thing?

Mr. **Pierce**: You don't object to answering the question, do you, Mr. Swan?

A. I have no objection to answering the question; but I never saw such a court; I thought there was always somebody to settle something.

Col. **Cooper**: Mr. Swan, it is entirely at your own option whether you will answer Mr. Crawford's question or not; you can do just as you please; I want to tell you that Mr. Crawford, as I understand him, has refused to enter an appearance here or to say that he appears for any of the parties to this record.

The **Witness**: Why can't he put the questions to that man and then put them?

Mr. **Pierce**: There is no necessity for that; why can't you answer Mr. Crawford's questions?

Col. **Cooper**: If R. B. F. Pierce, Esq., desires the aid of Mr. Crawford to conduct the cross-examination on behalf of Mr. Pierce's client Mr. Porter, the counsel for the defendants, hasn't the least objection in the world; but we want it to be so noted on the record.

Mr. **Pierce**: I stated at the start that Mr. Crawford was here at my request, inasmuch as he was familiar with all these matters with which I was not familiar; he was here at my request to ask these questions.

Col. **Cooper**: On behalf of Mr. Porter?

893 Mr. **Pierce**: Certainly.

Mr. **Crawford**: I adhere to my statement.

The commissioner then read the question as follows: "Mr. Swan, after the 23d of June, 1881, and up to the 15th of March, 1882, had there not been a large amount of work done on that railroad?"

Solicitor for defendants objected to the question as not proper cross-examination.

A. Yes; there was considerable work done.

Mr. CRAWFORD: Hadn't the entire track been laid from Oxford to Goodland and north of Goodland?

Solicitor for defendants objected to the question as not proper cross-examination.

A. It was not made north of Goodland—not unless it was the switches; it was laid from Oxford to Goodland, but not beyond.

Q. How much of the track was laid in June, 1881?

A. There was none of the track laid.

Q. What was done on the road?

A. Well, there was considerable grading done north of Goodland, between there and what is known as the fill south, as Wadena Hill, which is the heaviest fill there is between Oxford and Goodland; in fact as much work as all the balance of the grading almost was pretty well done against the 23rd of June.

Q. Is that about all?

A. Yes; that is about all.

Q. There has been some grading done north of Goodland?

A. Yes; the previous year.

894 Q. That was all light work, wasn't it?

A. Yes, sir; it was not heavy work.

Q. Common open prairie?

A. Yes, sir.

Q. And there had been one fill partly constructed south of Goodland, is that it?

Solicitor for defendants objected to all these questions as not proper cross-examination.

A. South of the hill; yes, sir.

Q. Had the company any rails in June?

A. No, sir.

Q. Or any ties?

A. No, sir.

Q. Or any timber?

A. No, sir.

Q. Had they any assets; and, if so, what were they?

A. I suppose that all the work they had done would be counted.

Q. Is that all?

A. Well, there was $49,000 of aid that had been voted to them.

Q. That was not collected, was it, at that time?

A. No, sir.

Q. None of it?

A. No, sir.

Q. It had not even paid in, had it?

A. No, sir; it was on the duplicates.

Q. Had they stock subscriptions?

A. I don't think they had; nothing more than to entitle them to organization.

Q. You mean by the duplicate the first half was on the duplicate, don't you?

A. Yes, sir.

Q. Not all of it?

A. They can levy but one per cent. a year.

Q. Had they any stock subscriptions outstanding to collect?

A. Not that I know of.

895 Q. That was the condition of the corporation, was it, in June, 1881, that they had little light grading north of Goodland and the grade partly done south of Goodland; no outstanding stock subscriptions due them, and this township aid had been voted, and the first half of it had been levied?

A. Yes. Now, understand me, that fill there between the hill of Wadena and across Pine creek there is about as much labor—well, it is as much labor as all the balance from Goodland to Oxford, and that was very nearly done at that time, because I live out there.

Q. As you understand it now, that was the situation of the corporation in June, 1881?

A. Yes, sir.

Q. Had the company then any means on hand to go on and finish the road of any kind?

A. No, sir; we were out.

Q. What do you mean by out?

A. Short of funds—hadn't any.

Q. Was there any work being done on the road in June?

A. Yes, sir; there was a large force at work.

Q. In June?

A. Yes, sir.

Q. The 23rd?

A. Yes; they were at work all the the time; I live right in sight of it; I see them at work all the time.

Q. On the 23rd of June do you say there was a large force of men at work?

A. Yes, sir; they had been at work since just as soon as the ground was fit to work in the spring, and they had been working all the time.

Q. Working all the time?

A. Yes, sir; every day; that was a dry season, if you remember, and there was not any rain to stop them. 896

Q. I am calling your attention to a particular point of time; hadn't the work stopped there at the time Mr. Foster came up here to dispose of those interests?

A. No, sir; there was perhaps three or four men stopped work; that was all.

Q. Who furnished the money with which the road was constructed intervening June and March, 1882?

Col. COOPER: If you know.

A. I don't know.

Mr. Crawford: If you knew by what was said at the board.

Objected to by solicitor for defendants.

A. We used the money that we sold the stock to you for; we used that amount, and there is a great deal of it that has not been paid yet, that the men worked for.

Q. Do you say Mr. Foster put in the money that was paid him for the stock in the road?

A. That is what he told me.

Q. Did you know I was furnishing any money?

A. No, sir; but I supposed that you——

Col. Cooper: Never mind what you supposed; just state what you know personally.

A. No; I never saw him furnish any money.

Mr. Crawford: I am not asking you about your seeing me furnish any money; I ask you whether you did not know officially as a director that I was furnishing the money down there?

A. Well, in that sense I might know that there was money being paid because the men were being paid about once a month.

Q. Didn't you know I was furnishing it?

897 A. Yes, sir; I reckoned you were furnishing it; we passed an order once there that you must not delay longer than the 15th of the month the payments.

Q. Then, you did know, did you?

A. Yes; I supposed that you did.

Q. You passed an order, didn't you, on the 7th of February 1882, of this kind: "Ordered, that the president shall confer with Henry Crawford, and demand that payment for labor shall not be made later than the 15th of each month for the preceding month?" You were present at that meeting, were you not?

A. Yes, sir.

Q. What was the meaning of that order?

A. It means just what it says.

Q. Under what obligation was I to furnish money to that company?

Solicitor for defendants objected to all this class of questions as not proper cross-examination.

Q. What contract was there or what obligation had I assumed to furnish money to that company, to your knowledge?

A. You were a leading stockholder in it; you had a controlling interest in it, and was building the road.

Q. And I was building the road?

A. Yes, sir.

Q. Do you mean to say that during the several meetings that took place between June and the time you resigned that you obtained no information as to who was buying and paying for the rails and ties and for the work done there?

A. It was the understanding among us that you were procuring those rails and iron and ties. 898

Q. That I was furnishing the money, wasn't it?

A. Either furnishing the money or getting it out of these bonds we had ordered issued; we supposed that was where the money came from.

Q. You supposed when you issued these bonds that those were to be used to get money to build that road, did you?

A. Yes, sir.

Q. Didn't Mr. Foster tell you so, that that was the object of issuing these bonds?

A. Is it so stated of record there?

Q. You were present, were you not, and voted for this mortgage?

A. Yes, sir; I voted for the mortgage.

Q. And you voted, did you not, in favor of this resolution, "Resolved further"——

Objected to by solicitor for defendants.

Q. Were you not present, and did you not vote, on the 29th of October, 1881, for the execution and delivery of this mortgage?

A. Yes, sir.

Q. Did you not vote for this resolution, "Resolved further, That the mortgage and bonds be copied and placed upon the record of the company, and the secretary attest the same under the seal of the company, and the president be authorized to do all acts necessary to perfect the execution and negotiation of the bonds?" You voted for that, didn't you?

A. Yes, sir.

Q. And you voted for that, knowing that these bonds were to be used to obtain money to go on with that road, didn't you?

A. Yes, sir; that was the object of voting them.

899 Q. You are one of the defendants, are you, in this case?

A. I have a claim in here, I believe.

Q. Are you one of the defendants? You are Mr. John W. Swan, are you not?

A. Yes, sir.

Q. Are you not one of the defendants in this case?

A. I put in a claim here for my stock.

Q. I say, ain't you a defendant?

A. Yes, sir; I suppose I am a defendant.

Q. Along with Mr. Cephas Atkinson. There is no other John W. Swan that you know of that resides in Union township?

A. No, sir.

Col. COOPER: I understand Mr. Crawford to say, and I will let this examination go on at any reasonable length, to say that he still, notwithstanding what Mr. Pierce has stated, and which has gone into the record, that he is still adhering to his former position, and that he does not appear here for Mr. Porter, or for any of the parties to this suit, and I simply want to say to the witness that unless Mr. Crawford puts it on record here that he appears as an attorney of

this court where this case is pending, representing some one of the parties here, that the witness is under no obligations to answer the questions. I don't propose that this matter shall be done under cover, and I do not propose that the defendants here shall be required to pay the costs of the examination of witnesses, and the testimony, and all that, at the instance of Mr. Crawford, simply
900 because he desires to gratify his curiosity. If Mr. Crawford will himself saw that he appears here for Mr. Porter, or for any other party in this suit, I have no objection to the testimony.

Mr. Pierce: In answer to what Col. Cooper has said I want to say that this examination is being conducted by Mr. Crawford at my request, and that the questions and the answers are adopted by me for and on behalf of Mr. Porter.

Col. Cooper: That won't do; if Mr. Crawford will say he appears here as counsel or as associate counsel for Mr. Porter, or any other party in this suit, I am perfectly willing he should go on with this. But I do not propose that Mr. Crawford shall come in and cross-examine the witnesses that are introduced here in this case simply on his own motion, and I, within a reasonable limit, and so far as Mr. Crawford himself is affected by this matter, I have not heretofore interposed any objection until this morning; but I do not propose to run this examination for the gratification of Mr. Crawford's curiosity.

Mr. Pierce: This is not being done to gratify the curiosity of Mr. Crawford, but the examination is being conducted by him for me and at my request, because he is familiar with the history of the matters concerning which the witness is testifying.

Col. Cooper: I will state to the witness, then, that whenever Mr. Crawford puts you a question, if you will inquire of Mr. Crawford whether he puts that as counsel for any of the parties in the
901 case or for all the parties, it is your duty to answer it. If he says he does not you are not under any obligation to answer it, as nobody knows any better than Mr. Crawford himself, and Mr. Pierce as well.

Mr. Pierce: I adopt every question Mr. Crawford puts and the answers, as counsel for Mr. Porter.

Col. Cooper: Then let him suggest the questions to you and you put them. I have no objection to that.

Mr. Pierce: I think we are entitled to have Mr. Crawford put these questions. He appears here at my request to conduct this examination on my behalf, and the questions and the answers are being adopted by me.

Col. Cooper: I want to ask, then, whether that arrangement is satisfactory to Mr. Crawford.

(Mr. Crawford makes no reply.)

Mr. Pierce: We will submit this matter to Judge Gresham and see what he says about it.

Col. Cooper: If Mr. Porter will put the matter here in this way that Mr. Crawford appears here at his request to cross-examine these witnesses that will do.

Mr. Pierce: That is not the fact, and I don't want the record to state anything that is not true. I say, when you insist on its going on the record here that Mr. Crawford appears as counsel for Mr. Porter, you are trying to get something on the record that is not correct, because that is not true. Mr. Crawford is not, and never has been, counsel of Mr. Porter's.

902 The further cross-examination of the witness was then suspended.

Z. F. Little, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. Cooper, and testified as follows:

Q. State your name, occupation, and residence.

A. My name is Z. F. Little; I live in Goodland, Benton county, Indiana; I am a merchant.

Q. Were you, prior to the 15th of March, 1882, a stockholder in the Chicago and Great Southern Railway Company?

A. Yes; and some little while after that.

Q. Some little while after that?

A. Yes, sir.

Q. How much stock did you own?

A. Five shares I had; I paid all assessments that were made on them in two ten-per-cent. assessments.

Q. Under whose advice did the board of directors act, if any one's, from the 23rd of June, 1881, down to the 15th of March, 1882?

A. I think all the business of any kind that was transacted was brought by Mr. Foster from Mr. Crawford; at least he so represented it, and it was done with that understanding, at Mr. Crawford's request.

Q. Does that include the execution of the mortgage and the bonds?

A. Yes, sir.

903 Q. What, if anything, during that period, did Mr. Crawford have to do with the mortgage, if you know, in the matter of getting up the mortgage and having it recorded?

A. Nothing, that I know of; our president, Mr. Foster, was empowered to execute the necessary bonds and mortgage.

Q. You don't know anything about it?

A. I don't know anything about it; I know he was in Chicago in private conversation with him; he talked about seeing Mr. Crawford, but, personally, I know nothing about it.

Q. Did you, during that interval, see Mr. Crawford yourself?

A. I saw him several times; yes, sir.

Q. Was he ever present at any meetings of the board?

A. I think not until the meeting that we resigned.

Q. On the 15th of March, 1882?

A. Yes, sir; that is my recollection.

Q. Why did the old directors resign on the 15th of March, 1882?

A. Because our connection seemed to be unsatisfactory to Mr. Crawford, and in pursuance of an agreement that we had entered into he asked us to resign.

Q. What complaint did he make of your actions, if you know?

A. He said it was a matter of——

Mr. **Pierce**: Is this conversation you had with him?

A. Yes, sir; it seems the business was unsatisfactory to him, and he complained to me more literally of Mr. Foster; he said it was impossible to control him, and he must have—the road belonged to himself, and he must have some men that would do what he wanted done.

904 Col. **Cooper**: Some men—what men; in the board of directors?

A. That is the understanding I had of it; yes, sir.

Q. From him?

A. Yes, sir.

Q. Were you present at the time the directors resigned, on the 15th of March, 1882?

Q. Did you remain in the room during the time of the session?

A. Yes, sir; until my resignation had been accepted, and, I think, my successor appointed, probably, when I went out.

Q. When was that, towards the close of the meeting or the beginning?

A. My recollection is that that was about all that was transacted. We done no business that evening; we merely made over our resignations.

Q. Did any of the new directors take their places?

A. Yes, sir.

Q. Who? What new directors were there?

A. Each one who was appointed took part in the meeting.

Q. Was young Mr. Crawford there—Mr. Crawford's son?

A. Yes, sir.

Q. Mr. Starin—was he there—William A. Starin?

A. I cannot say whether he was there or not; there was one or two gentlemen that I did not know.

Q. Was Mr. Conklin there—D. H. Conklin?

A. I am not positive whether he was there or not; my recollection is that he was.

Q. Was Mr. Lacey there?

A. Yes, sir.

Q. Was Mr. Henry Moore there?

905 A. I think not; I don't know the gentleman.

Q. Was Mr. D. J. Lyon there?

A. I could not say as to him.

Q. He was a lawyer from Chicago?

A. I could not say.

Q. Do you remember how many there were of Mr. Crawford's party?

A. I don't remember; there were several of them there, and I had never met any of them; and only those I became acquainted with afterwards that I can remember being there. I remember four or five—possibly six—gentlemen, being there; but which ones they were I could not say. They were all strangers to me at that time, except Mr. Crawford and his son.

Q. Do you remember whether there was an election of treasurer of the company at that time?

A. Well, that occurred after I went out, if there was any.

Q. Do you remember anything about a general superintendent being elected?

A. I was not there when any business was transacted.

Q. Do you know anthing about Mr. Crawford having some of the bonds of the company?

A. Mr. Foster reported to me that he came to Chicago and signed a million dollars' worth of bonds—that is, this was to me individually, not as a director, that this conversation was had—and had left them with Mr. Crawford to be negotiated.

Q. To be negotiated?

A. Yes, sir.

Q. For whom?

A. For the benefit of the company, as I understood it.

906 Q. Was the matter of these bonds that *they* were placed in Mr. Crawford's hands a matter of talk with the directors at any of their meetings or at the meeting held on the 7th of February, 1882, where Mr. Crawford's construction contract was reported and rejected?

A. My recollection is that there was nothing officially reported in reference to the bonds.

Q. Was there any information given to the directors?

A. Not that I remember of.

Q. As to what was to be done with them?

A. I remember nothing; all I remember in reference to the bonds is Mr. Foster occasionally would speak of them, and say Mr. Crawford was expecting all the while to find somebody to take the bonds. I don't know how many times it was spoken of in that way, but when there was any shortage of funds of course it was always attributed to the inability to sell the bonds.

Q. Do you remember about a construction contract being presented to the board by Mr. Foster which it was proposed the company should enter into with Mr. Crawford?

A. Yes, sir.

Q. Do you remember about what time that was?

A. Well, it was a short time prior to the middle of March, that meeting—probably a meeting previous.

Q. Of the 9th of February, 1882?

A. Some time about that time. I don't remember the date except from the record.

Q. Do you remember on what ground the board rejected the contract?

A. It was on account of what we considered the unfairness of the contract.

907 Q. Towards whom?

A. Towards the company.

Q. Is this the contract that has been introduced in evidence, "Exhibit B?"

A. I read it this morning; it is the terms of the contract, as near as I can remember; I think it is the same thing.

Cross-examination by Mr. PIERCE:

Q. Mr. Little, you were in at the organization of this company?

A. Yes, sir.

Q. You were one of the original directors of the company?

A. Yes, sir.

Q. You remained so up until March, 1882?

A. Yes, sir.

Q. Continuously, right along?

A. Yes, sir.

Q. What was its condition financially during that time?

A. Oh, we had but little funds.

Q. Where did you get what little funds you had—from what source?

A. Well, the first funds we had were, say, two ten per cent. assessments paid on the stock subscription.

Q. How much was that?

A. Well, I can't call to mind now just what amount of money was realized on it.

Q. You know what the amount of the capital stock was, or how much stock had been taken and subscribed for?

A. Yes, sir; it was not all paid; there was only a small amount of money paid in.

Q. How much stock was subscribed for?

A. I think $50,000.

908 Q. There were two ten per cent. assessments on that?

A. Two ten per cent. assessments.

Q. How much money do you estimate was paid in on the stock assessments?

A. The assessments were not nearly all paid in. If you will bear with me a moment I will give you a little history of how we got money.

Q. Very well.

A. There was a small amount paid in; a few of us paid in assessments. Then we entered into a contract with Gordon by which he went on and done some work, and we issued him stock for it. This stock was issued to Mr. Gordon and transferred to Mr. Foster, and he deposited the stock with some other parties there and got some few hundred—I don't know, possibly two or three thousand—dollars.

Q. How much stock was given Mr. Gordon?

A. Well, I can't call to mind now the amount.

Q. Have you any idea at all?

A. Why I have not without the records.

Q. Have you any idea at all, Mr. Little—any recollection on the subject?

A. No; I should say forty or fifty thousand dollars or something; I paid no attention to it from that time to this; I have scarcely thought of it.

Q. You remember about it at the time?

A. Yes, sir.

Q. You were secretary of the company at that time, were you not?

A. Yes, sir; I was.

Q. And countersigned the stock, did you?

A. Yes, sir.

909 Q. You say that stock was given to Gordon for the construction of the road on the construction contract?

A. Yes, sir.

Q. You say that stock was assigned by him or transferred to William Foster?

A. I think it was.

Q. For what purpose?

A. For the purpose of raising money.

Q. To get money?

A. Yes, sir.

Q. What was the condition of the road as to its finances? In the first place how much work was done on the road in June, 1881; how much had been done up to that time?

A. In the fall previous there had been some grading done, I think, both north and south of Goodland.

Q. About how much?

A. Well, I can't say how much; very little, though.

Q. Have you any idea how much money had been expended on the road up to June, 1881?

A. Not in money; I have not.

Q. In construction?

A. We paid all the grading in the stock, and of course I don't know what it cost.

Q. Then there had just been a little work done, such as you could get done by issuing stock in payment of it?

A. Such as——

Q. The company was absolutely without money, wasn't it?

A. Oh, yes.

Q. Up to June, 1881, it hadn't any money on hand at all?

A. Scarcely any.

Q. Very little?

A. Very poor condition.

Q. What was the condition in the following March, 1882?

910 A. Well, the track was laid to Oxford.

Q. Where from?

A. From Goodland to Oxford.

Q. Where else?

A. I don't remember as to whether it was laid north of Goodland or not. If it was at all it was only a short distance. Virtually the track was laid from Goodland to Oxford.

Q. Had there been some grading done south of Oxford?

A. I think there had; I was not over the line.

Q. There had been a good deal north of Goodland also, towards Fair Oaks?

A. I think so.

Q. Hadn't there been a good deal of work done from June, 1881, to March, 1882?

A. Yes, sir.

Q. Whose money paid for that work?

A. It was money, I think, that Mr. Foster got from Mr. Crawford.

Q. Mr. Crawford is the only man you know of that put up money during that time, isn't he?

Q. Yes, sir.

Q. Wasn't it talked about from time to time in the board of directors and among the directors that Mr. Crawford was the only man who was furnishing money; that he was the man who was furnishing the money?

A. He was the man we looked to to furnish money, yes.

Q. You didn't look to anybody else?

A. No, sir.

Q. These bonds you ordered your president — you passed a resolution to issue the mortgage and issue bonds for the purpose of paying Mr. Crawford, indemnifying him for what he had done and what was to be done, didn't you?

A. I think, virtually, that was the understanding.

Q. You voted for the resolution authorizing the execution
911 of the mortgage and the issuing of the bonds?

A. Yes.

Redirect examination by Col. Cooper:

Q. Why did you look to Mr. Crawford to furnish the money?

A. Because he had represented his ability to do it, and intention to do it, when the sale was negotiated to him.

Q. That is, the sale of the stock?

A. Yes, sir.

Q. Did you not understand that he was to reimburse himself for the advances made when he could negotiate the bonds at a reasonable price?

A. Yes, sir.

Q. That was the understanding of the board?

A. Yes, sir.

Q. For all the moneys he had advanced?

A. Yes, sir.

Q. Do you know whether he had paid for the material that was on hand and put into the work up to the 15th of March?

A. No; I do not.

Q. You don't know anything about it?

A. Not personally; no, sir.

Q. Do you know it from talk with Mr. Crawford or Mr. Fostor, or any of these people who you have been inquired about on the cross-examination?

A. No, sir.

Q. You don't know how that was, whether that had been paid for or not.

A. I do not.

Q. Do you know whether or not it had been done on the credit of the company.

A. No; I cannot say as to that.

Q. Do you know how the stuff came down there? Was it billed to the company?

A. My impression is that that stuff was billed to Mr. Crawford, but I would not be positive about that.

912 Q. I understand you to say you don't know whether Mr. Crawford made these purchases on account of the company and the credit of the company or his own?

A. I do not; no, sir; I know that he was not authorized to make any purchases on account of the company.

Q. He was not?

A. No, sir.

Q. There has been introduced into evidence, under date of October 10th, 1881, an account of sales of the Cleveland Rolling Mill Company, for account of the Chicago & Great Southern Railway Company, by Henry Crawford, of Chicago, Illinois, a thousand gross tons of iron rails, and accepted by the Chicago & Great Southern Railway Company, by Henry Crawford. I will ask you whether Mr. Crawford was authorized at that time to enter into that arrangement on behalf of the company?

A. No, sir; he was not.

Q. Do you know from whom any of the material that was down along the line of the road was purchased?

A. I do not; no, sir.

The signature of the witness to the above deposition was waived by agreement of counsel.

The cross-examination of JOHN W. SWAN was then resumed by Mr. CRAWFORD as follows, under the following agreement:

913 It is agreed by counsel that the cross-examination of Mr. Swan may be completed by Mr. Crawford, as Mr. Pierce desires him to, but that the question whether in the cross-examination of future witnesses Mr. Crawford shall have the right to cross-examine the witnesses without appearing as and for any party in the record is to be presented to Judge Gresham this afternoon.

Mr. CRAWFORD: Mr. Swan, I see [in] an allegation in the answer filed in your name in this case this statement: "On the 18th of March, 1882, no work had been done upon said line of railroad of any value." Is that correct?

A. No, sir.

Q. There had been work done of very great value up to that time, had there not?

A. Yes, sir.

Q. How far do you say you live from the line of the railroad?

A. Just two miles.

Q. You have been more or less familiar, have you not, with the fact that the work of construction progressed right along after the 15th of March on the line?

A. Yes, sir; I don't think there was a great deal of work done until after the weather settled. All good weather was used on constructing the road at that time.

Q. You knew the work was going on down towards Attica, didn't you, and the road being opened through?

A. I heard it was going on all the time; I was not down.

Solicitor for defendants objected to the witness stating what he heard.

Q. When did you first take the position that you as an individual was a stockholder in the Chicago & Great Southern Railway Company—after the 15th of March, 1882?

Objected to by solicitor for defendants.

914 A. About the month of last June, I think.

Q. Please state the circumstances under which you took that position and how you came to take it.

Objected to by solicitor for defendants.

A. I was in Fowler, and Mr. Wylie said to me that the men that had done the work—the grading, the boarding, and the labor men—the men who had done so much labor on it, were likely to lose everything by the ruling of the court that the township trustees was not entitled to it, and that if the townships were not entitled to it that the tax-payers were, and I said if I could be of any service to protect those men I would do it, and to use my name; that is what I said. I told Mr. Dwiggins the same thing when he came to try to get me to withdraw from the suit. Mr. Dwiggins came to me and tried to get me to withdraw my name—wanted to know what I meant by it—and I told him I meant to aid those men as far as possible to get their money. I had no feeling or anything else. I knew the parties, and I thought they ought to have it, or a good many of them.

Q. Did you ever take from the treasurer of Benton county a receipt for your payment of taxes?

A. In connection with my other taxes, it is specified on each receipt how much I paid.

Q. Didn't you in August of this year go to the treasurer of Benton county and get a special receipt made out?

A. No, sir.

Q. That appears to be the allegation in this——

A. My attorney might have done it.

915 Q. Then you never took any yourself, then; is that it?

A. I did not request my attorneys to do it. I didn't request the treasurer to give me a receipt.

Q. Did you know anything about the fact that it had been given?

A. I cannot say positively that I did.

Q. Who do you mean when you speak about your attorneys?

A. Straight & Wiley, at Fowler.

Q. Did you ever have any talk with any other attorneys about the matter?

A. I never saw any other attorneys except Mr. Calkins. I haven't seen him for several years; never since this case.

Q. Did you have any understanding or agreement with regard to the use of your name, as you say?

A. No, sir; I had no agreement.

Q. As to costs or anything?

A. They assured me that it should not cost—that I should not have to pay the costs.

Q. Who assured you?

A. Those attorneys.

Q. Which attorneys? Name them.

A. Straight & Wiley.

Q. That is, at this time you said you might have your name used?

A. Yes, sir.

Q. Was there any arrangement about fees?

A. No, sir.

Q. Were you to pay them any fees?

A. No arrangement about that at all.

Q. Were you to pay them any fees?

A. No, sir.

Q. You were to pay neither costs nor fees in any event; is that it?

A. No, sir; I was not to pay any costs or fees.

916 Q. You simply lent your name?

A. Yes, sir.

Q. For the other parties?

A. Yes, sir.

Q. Is that it?

A. For the purposes that I stated.

Q. And under a distinct guaranty made at the time that you should never be called upon to pay either costs or fees?

Solicitor for defendants objected to the question, on the ground that Mr. Crawford falsifies the statement of the witness when he says under a distinct guaranty. He has not said anything of the kind.

Q. What was the fact with regard to that? Was it not distinctly agreed at that time that in no event should you be responsible for either fees or costs?

A. They said that I should not pay any costs, and there was nothing said exactly about fees, but I did not suppose they would ask any fees. I think I told them I would not pay any fees.

Q. That you would not pay any fees?

A. Yes, sir.

Q. Did you seek this interview with these attorneys, or did they come to you with this?

A. They came to me to my farm.

Q. Did they request the use of your name as a tax-payer to enable them——

A. Yes; they placed the case before me, and asked if I was willing for my name to be used, and I said yes.

Redirect examination by Col. Cooper:

Q. Who was this Dwiggins?

917 A. He was president of the Oxford Bank.

Q. Wasn't he in the interest of Mr. Crawford; didn't he come to you in the interest of Mr. Crawford?

A. He said Mr. Pierce sent him to me.

Q. R. B. F. Pierce?

A. Mr. Pierce, he said.

Q. What did he say Mr. Pierce wanted him to say to you?

A. He wanted to see what I meant, what I wanted, and if I would not get out of it.

Q. Get out of what?

A. Get out of——

Q. The litigation?

A. Yes, sir.

Q. Did he say anything about Mr. Crawford—Henry Crawford?

A. I don't think he did.

Q. As I understand you, you are asserting your rights as a stockholder in this matter in your attorneys?

A. Yes; if it does not belong to the township trustees, why, it certainly belongs to me.

Q. And that your main object is in compelling the payment of the debts due for labor along the line of that road?

A. Yes, and if I can get a few dollars out of it it is all right; but my prime object was that, to secure to those men that did the work their money.

Q. Do you know what relation this Mr. Dwiggins ever had with Mr. Crawford?

A. I could not say that I know of any relation, only—well, I could not say that I know of any relation that they had; only an acquaintance.

Q. Was he a lawyer?

918 A. Yes, sir; he has been. Well, he is an attorney yet.

Q. He told you Mr. Pierce sent him to you?

A. Yes, sir.

Q. To have you withdraw from the case?

A. Yes; wanted me to get out of the case.

Q. Have you had any other applications on the part of Mr. Pierce or Mr. Porter or Mr. Crawford to get out of the case?

A. No, sir.

Q. Have you ever heard any threats they made, what they would do if you did not stop this litigation?

A. No; and I didn't care what they said.

Mr. Crawford: Did you ever have any request or suggestion from me on the subject at all, direct or indirect?

A. In regard to this matter?

Q. Yes.
A. No, sir.

Col. Cooper: Do you say indirect; you don't know whether Dwiggins had not been consulting with Mr. Crawford or not?

A. I don't know anything about that; he said Mr. Pierce sent him.

The signature of the witness to the above deposition was waived by agreement of counsel.

A. E. Bingham, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. Cooper and testified as follows:

Q. State your name, occupation, and residence.
A. My name is A. E. Bingham; residence, Hyde Park; occupation, timber business.
919 Q. What firm, if any, have you been or are you now connected with?
A. The Marsh & Bingham Company.
Q. Did the Marsh & Bingham Company furnish any material for the construction of the Chicago & Great Southern railway?
A. Yes, sir.
Q. In what year?
A. 1883.
Q. With whom did you make the arrangements?
A. The arrangement was made with Mr. Crawford & Mr. Lacey.
Q. Mr. Henry Crawford?
A. Mr. Henry Crawford; yes.
Q. What connection did Mr. Crawford represent himself as having with the company at that time?
A. President of the road.
Q. Do you remember at what time in the year it was the arrangement was made for the purchase?
A. The first order was made in July, 1883; from that to September it was partly delivered.
Q. Did you ship the timber down on the road?
A. The timber was shipped to Veedersburgh.
Q. On the line of the Chicago & Great Southern railway?
A. The timber was consigned to Veedersburgh, and there supposed to be taken by them; it was consigned to the Chicago & Great Southern railway, Veedersburgh, Indiana, care C. S. Worden, agent, over the I., B. & W.
Q. What was the timber for?
A. Bridges, I suppose, from the character of the stuff; stringers and caps and some other material which I don't know that I could tell what they would use it for.
920 Q. Did you ever get your pay for the material?
[A.] We received part pay.
Q. How much?
A. We received $1,000.

Q. How much was unpaid?

A. It left a balance of something over $1,300 unpaid.

Q. Was the claim ever put in judgment?

A. Yes, sir.

Q. Against the Chicago & Great Southern Railway Company?

A. Yes, sir.

Q. Do you know whether or not that claim thus put in judgment in favor of the Marsh and Bingham Lumber Company is a part of the judgment in this case in favor of Wirt D. Walker, rendered by the United States circuit court at Indianapolis?

A. Yes, sir; I presume it is the same. He is secretary of the company.

Cross-examination by Mr. **Pierce**:

Q. Who did you have your dealing with?

A. With Mr. Crawford and Mr. Lacey.

Q. Are you sure you had any dealing with Mr. Crawford; wasn't it altogether with Mr. Lacey?

A. No; it was not. Mr. Lacey approached us on the subject first, and I saw Mr. Crawford myself in the office afterwards.

Q. When was that?

A. Do you mean the date?

Q. Yes.

A. I cannot give you the exact date. It was prior to any of our shipments.

Q. When was that?

921 A. The first shipment was made in August, I believe.

Q. 1883?

A. 1883; I think the 21st day of August.

Q. How much was paid on the bill?

A. $1,000.

Q. Who paid it?

A. It came to us through our attorney.

Q. Did they tell you Mr. Crawford paid it?

A. Yes, sir; Mr. Crawford paid the attorney a thousand dollars on each account, provided they extended the judgment. We took a judgment.

Q. Do you mean the judgment or default?

A. The taking of the judgment.

Q. He paid a thousand dollars on each account on what condition?

A. That we would carry the thing along thirty days.

Q. Carry the thing along without taking judgment?

A. Yes, sir.

Q. How was it paid—by money or by check?

A. That I could not say.

Q. How did it come to you?

A. It came to us through our attorney. I believe he gave us currency.

Q. They told you Mr. Crawford had paid them?

A. Yes, sir.

Mr. **Crawford**: What was the date of that payment?

A. The date of the payment was in 1884. My recollection is now it was in May. I could not say now without reference to the books. I think it was in May, 1884.

The signature of the witness to the above deposition was waived by agreement of counsel.

Adjourned to Monday, November 9th, at 11 o'clock a. m.

922 MONDAY, *November* 9, 1885.

Parties met pursuant to adjournment at 11 o'clock a. m.

MARVIN A. FARR, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. What is your name, occupation, and residence?

A. My name is Marvin A. Farr; age, thirty-two; occupation, real estate business; residence, Chicago.

Q. Where is your place of business in Chicago?

A. 68 Washington street.

Q. Are you in company with any one?

A. Yes; James B. Goodman.

Q. What business relations have you, if any, with Mr. Henry H. Porter?

A. I have for a good many years done business with him and in connection with him in various ways.

Q. Were you present at Fair Oaks, Indiana, on the 4th of May, 1885?

A. Yes, sir.

Q. Who did you go down there with?

A. Mr. Gardner and Mr. Hillard, who are here; Mr. Cobb, Mr. Kimball, Mr, Ferry, and another gentleman who was the secretary of this company at that time.

Q. F. F. Lacey?

A. Lacey, yes; those are all that I remember.

Q. Who asked you to go down there?

A. I don't remember who, whether it was Mr. Porter or Mr. Hillard or Mr. Gardner.

923 Q. One of those three gentlemen?

A. Yes, sir.

Q. What interest had you on that day when you went down in the Chicago and Great Southern Railway Company?

A. As a stockholder do you mean?

Q. Yes.

A. I had a share of stock in my name.

Q. From whom did you get it?

A. I got it either from Mr. Lacey or Mr. Hillard, as I remember it.

Q. Just one share?

A. Yes, sir.

Q. Did you subscribe for it on the books of the company, do you know?

A. I don't remember; I suppose so. It was in the ordinary form, at least.

Q. Did you sign your name for it on any book of the company as a subscriber?

A. I don't remember; I think not.

Q. Did you pay anything for it?

A. No.

Q. It was a certificate representing one share of a hundred dollars, was it not?

A. Yes, sir.

Q. Have you got it yet?

A. No, sir.

Q. What did you do with it when you came back from the meeting?

A. I returned it to Mr. Hillard.

Q. You had no interest in it except simply to represent that share going down there?

A. Yes, sir.

Q. Did you vote it by the proxy of anybody? Did you have a proxy to vote it?

A. No, sir.

Q. You voted it in your own name at the stockholders' meeting?

A. It was in my name.

Q. Was it issued to you or had it been issued to somebody
924 else and then assigned to you?

A. It is my impression it was issued directly to me.

Q. And when the meeting was over you returned it either to Mr. Hillard or Mr. Lacey.

A. Yes, sir.

Q. Have you any interest, other than your connection with that share of stock in the railway company, now?

A. No, sir.

Q. Any pecuniary interest?

A. No, sir.

Q. And for that you say you never have paid that share of stock?

A. No, sir.

Q. Was that share of stock a part of the 12,000 shares that were represented at the meeting, as shown by the records of the company?

A. Yes, sir; I have no doubt it was; it was represented and should be so reported.

Q. Do you know how many shares of stock the other gentlemen who were there represented at the meeting?

A. I don't remember now; I could tell from the records.

Q. The records of the stockholders' meeting do not show how many shares each one represented; it reports that there were 12,000 shares voted, and that ninety-six were cast in person, and 11,904 by proxy; do you know who cast those 11,904 votes by proxy?

A. I don't remember; I should say Mr. Gardner.

Q. Do you know whose proxy he had—from whom?

A. I don't remember; no, sir.

Q. Was there a ticket prepared for the nine directors?

A. Yes, sir.

925 Q. Do you know who prepared the ticket?

A. I do not; no.

Q. There was only one ticket presented; all the votes that were represented at the meeting were cast for that one ticket.

A. Yes, sir.

Q. And that was the ticket that was elected?

A. That was the ticket that was elected.

Q. Do you remember about how many shares Mr. E. F. Lawrence represented at the meeting?

A. Oh, he was not there; he was not present; no, sir.

Q. What was said to you when this share of stock was brought to you by either Mr. Gardner, or Mr. Porter, or Mr. Hillard?

A. He wished me to become a director in the organization, and of course it was necessary to have the stock.

Q. And this stock was given to you to supply the necessity?

A. For that purpose.

Q. When you gave back that share of stock, was that in accordance with any request made to you to do so?

A. I think not; I handed the stock back to one of those two gentlemen; I don't remember which.

Q. Down at the meeting?

A. I think it was there before we returned on the train; yes.

Q. Was your name on the stock; are you sure?

A. Yes, sir.

Q. Are you certain of that?

A. Yes, sir.

Q. Has there been any meeting of the board of directors since the first one after that meeting, which was held on the 11th of May, that you have been present at?

A. I think I attended one in Portland Block after that; I am positive I did.

926 Q. That was the stockholders' meeting down there on the 4th of May, at Fair Oaks?

A. Oh, yes.

Q. After that you attended a directors' meeting?

A. Yes, sir.

Q. The record reports that as May 11, 1885?

A. Yes, sir.

Q. After that were you present at any meeting?

A. Any directors' meeting?

Q. Yes.

A. I think not; I may possibly have attended one, but I don't remember.

Q. In the absence of any being shown on the record-book, you would say you had not?

A. I would say no.

Q. Did you have any talk with Mr. Porter personally about this matter, about your being a director?

A. No, sir, except in a general way in talking over the railroad interest and the project in general.

Q. Were you solicited to go into the matter and take a pecuniary interest in it?

A. Not solicited; no, sir.

Q. Were you spoken to about it as to taking a pecuniary interest in the enterprise?

A. No, sir; it was stated I might if I chose. There was no solicitation about it at all.

Q. When?

A. I could not say when.

Q. In reference to the time you were asked to become a member of the board and go down to the stockholders' meeting?

Mr. GARDNER: Col. Cooper is now speaking about the Chicago and Great Southern.

A. About an interest in that?

Col. COOPER: Yes.

927 A. I was never solicited to take an interest in it; no, sir.

Q. You never were?

A. No, sir.

Q. And you never did?

A. No, sir.

Cross-examination waived.

The signature of the witness to the above deposition is waived by agreement of counsel.

C. W. HILLARD, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. COOPER and testified as follows:

Q. State your name, age, occupation, and residence.

A. My name is Charles W. Hillard; age, thirty; I am secretary and treasurer of the Union Steel Company; residence, Chicago.

Q. Where does the Union Steel Company have its headquarters?

A. Its works are at Bridgeport.

Q. Where is its office?

A. Its office is in Portland Block, room No. 36.

Q. Who is the president of the Union Steel Company?

A. H. H. Porter.

Q. Who owns a majority of the stock in it?

A. No one man owns a majority, and no one set of men that I know of.

Q. Who employs you as secretary and treasurer; what man, what person?

928 A. No person at all. I was elected by the board of directors; they always elect their officers every year.

Q. Who are the directors?

A. Well, there is H. H. Porter, J. C. Morse, Hugh Riddle, J. H. Bass, H. R. Bishop, William H. Barnum—Senator Barnum. I know them, but it is hard to recall the long list. A. B. Stone—I am one myself—Marvin A. Farr.

Q. What was your occupation before you became secretary and treasurer of that company?

A. Well, I was assistant secretary of the Chicago, St. Paul, Minneapolis and Omaha railroad prior to that.

Q. Who was president of it when you were assistant secretary?

A. H. H. Porter.

Q. Mr. Porter ceased to be connected with the road officially, did he not?

A. Yes, sir.

Q. Who brought you here to Chicago in connection with this Union Steel Company?

A. I was here for several years before I was connected with the Union Steel Company. This was the office of the Chicago, St. Paul, Minneapolis and Omaha Company when I was the assistant secretary.

Q. Mr. Porter was the man who really employed you, was he not?

A. Yes; I came into Mr. Porter's employ about eight years ago as his private secretary, and I have held several offices since then.

Q. And it has been through Mr. Porter's good offices that you have held those places, has it not?

A. That is a thing I cannot decide. I tell you when I have had
offices in any corporation I have been duly elected by the
929 board of directors. I don't know that Mr. Porter used his
influence with them.

Q. What I am after is this: Whether or not it was through Mr. Porter that you held these several places, on account of his relations with the corporation. Didn't you so recognize it?

A. Well, there is generally a leading spirit in a corporation of that kind and they generally have great influence. I don't know whether it was Mr. Porter or not, because I have known for years a majority of those men there and I have acted for a majority of the board who have now elected me. I don't know that Mr. Porter said a word or had anything to do with it. He simply voted like the rest of them. There is not one of those men that I have not known for years.

Q. You mean the board of directors for the Union Steel Company?

A. Yes, sir.

Q. What other occupation have you besides being secretary and treasurer of the Union Steel Company?

A. I was recently elected treasurer of the railroad company organized in Indiana called the Lake Michigan and Ohio River Railroad Company.

930 Q. Who is president of that company?

A. H. H. Porter.

Q. Were you present at the stockholders' meeting of the Chicago & Great Southern Railway Company held on the 4th of May, at Fair Oaks, Indiana?

A. Yes, sir.

Q. The record recites that at that meeting there were cast 12,000 votes, of which 96 were cast in person, and 11,904 by proxy; how many votes did you cast in person, if any?

A. I cast one vote in person.

Q. Did you cast any by proxy?

A. I think not; I think that Mr. Henry A. Gardner was made attorney, or proxy rather, for quite a number of shares, with the power to substitute my name, but my recollection now is that Mr. Gardner voted them and that I did not, but I will not be positive.

Mr. **Gardner**: I will say that a power of attorney was made out to both Mr. Hillard and myself; we both voted it.

The **Witness**: Did I sign the tickets?

Mr. **Gardner**: Yes; that is my recollection.

A. I don't recollect it any more definitely than I have stated; it may be so.

Col. **Cooper**: Where did you get the share of stock you voted in person?

A. Well, it was assigned to me in order to have a share of stock in my name, because they contemplated putting me on the board of directors.

Q. Simply for that purpose it was assigned to you?

A. Well, I did not own it.

Q. You did not own it?

A. No, sir.

Q You do not own it?

931 A. I do not own it, except as trustee. I own it, as I consider, in trust.

Q. For whom?

A. For Mr. H. H. Porter.

Q. Whose stock was this 11,904 shares that were voted by proxy, do you know?

A. Yes; they belonged to H. H. Porter.

Q. Who of the gentlemen present there voted more than one share? I see 96 shares were cast in person.

A. I was one of the inspectors at that election, and I made up the figures, still I will not be perfectly sure; I think George C. Kimball voted 90 shares, and I think there were six other gentlemen there who voted one share apiece; that made 96, and I think all the other stock certificates were presented, but Mr. Gardner and myself, as he suggests, voted them by proxy.

Q. Was this proxy signed by Mr. Porter?

A. No, sir; not to my recollection.

Q. Who gave you the proxy? This was a proxy from somebody to you, and Mr. Gardner, as he suggests.

A. Yes, sir.

Q. Who gave that proxy?

A. The gentleman in whose name the stock stood.

Q. Who was that?

A. That was Henry Crawford.

Q. He gave the proxy?

A. Yes, sir.

Q. Hadn't that stock been endorsed by Henry Crawford?

A. Yes, sir.

Q. In blank?

A. Yes; but it stood in his own name on the books.

Q. On what books?

A. The certificates themselves; there was no book kept; at the same time the secretary of the company made up his books, or perhaps, be there were only nine of them, and one of them might be for two shares; I can't remember without referring to papers.

Col. **Cooper**: I think I shall want to make a further examination of this witness with his papers before him.

Cross-examination by Mr. **Gardner**:

Q. How many shares of stock were represented at that meeting at Fair Oaks—the stockholders' meeting?

A. 12,000.

Q. How much of the stock of the company was represented at that meeting?

A. All of it, so far as was recorded; we had a statement presented to us of the shares of stock then outstanding and it only covered 12,000 shares; of course, that was presented to us by the secretary.

Q. That was signed by the secretary?

A. Yes; I think so. I think there was a regular certificate made on the bottom of the list that it was a full list of the stock then outstanding.

Q. Who was secretary?

A. F. F. Lacey.

936 Redirect examination by Col. **Cooper**:

Q. Do you know of your own knowledge whether there was any other stock outstanding at that time?

A. I don't know of any.

Q. Do you know whether there was any?

A. I had heard that there were some parties in Indiana who had paid taxes in aid of this railroad, and who claimed to have stock, but they had never made demand on us, Mr. Lacey said, for the stock, and he never issued any certificates to them, so I was doubtful whether they were stockholders or not.

Q. That is what you mean then; there was some $60,250 of old stock that had been issued some time, was there not?

A. I never knew of anything being issued prior to this.

Q. You never did?

A. No, sir; I never saw it or heard of it.

Q. There have been several certificates representing some $60,250 of stock that had been issued prior to 1883?

A. Chicago & Great Southern Railway stock?

Q. Yes.

A. No; I don't know anything of it.

Mr. **Gardner**: That was the Chicago & Indiana railroad that was surrendered.

Col. **Cooper**: Was that stock taken up and this other stock issued in place of it?

A. I don't know anything about it; I remember I have seen that Chicago & Block Coal stock—those certificates that were presented here.

937 The signature of the witness to the above deposition was waived by agreement of counsel.

Col. **Cooper**: I want this matter adjourned now until Thursday, when I will have my witnesses here.

Mr. **Pierce**: I do not consent to the adjournment to Thursday.

The further taking of testimony was then adjourned to Thursday, November 12, 1885, at 10 o'clock a. m.

938 Thursday, *November 12th*, 1885.

Parties met pursuant to adjournment at 10 o'clock a. m.

Present: R. B. F. Pierce, Esq., solicitor for the complainant; Henry H. Porter; Henry A. Gardner, Esq., solicitor for the defendant, The Chicago and Great Southern Railway Company; Col. John S. Cooper and H. Meiselbar, Esq., solicitors for Swan & Atkinson, and also for the Cleveland Rolling Mill Company and other judgment creditors, and Henry Crawford, Esq., who appeared at the request of R. B. F. Pierce, Esq.

Samuel M. Nickerson, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. **Cooper**, and testified as follows:

Q. What is your name, residence, and occupation?

A. My name is Samuel M. Nickerson; residence, Chicago; occupation, banker.

Q. With what banking institution are you connected?

A. The First National Bank.

Q. You are president of that institution?

A. Yes, sir.

Q. Do you know Henry Crawford?

A. I do.

Q. How long have you known him?

A. Twelve or fifteen years.

Q. Do you know about the Chicago and Great Southern railway?

A. I do in a general way; yes.

939 Q. When was that property first brought to your attention, and by whom?

A. In June, 1884, I returned to New York from a trip abroad. I had been absent seven months then. My attention was called to it at that time.

Q. By whom?

A. By the bank officers.

Q. Did you have any negotiation with Henry Crawford with reference to the property?

A. Not at that time.

Q. Did you subsequently?

A. I did subsequently.

Q. Just state in your own way about what was done.

A. On my arrival in New York I received letters from the bank and from Mr. Porter stating that Mr. Crawford had hypothecated $1,200,000 of bonds and $1,200,000 of stock, is my recollection of the amount, with Drexel, Morgan & Co. for a loan, and that the bank held a second lien upon those securities; that they were in danger of being sold out; in fact, they had been advertised to be sold once, and the sale had been extended, and that they thought it important to get a further extension of time. I commenced the negotiations with Drexel, Morgan & Co., and then returned to Chicago, the result of which was that they agreed to give Mr. Crawford an extension of sixty days, from about the middle of June to the middle of August, provided that they were secured, and that they should have their money when the time matured. After some negotiations myself and Mr. Porter entered into a contract with Morgan, Drexel & Co.

Q. Without stating the contents of that contract, have you
940 got the contract?

A. No; I have not.

(Contract produced by Mr. Pierce and handed to witness.)

Q. This was entered into on the 25th day of June?

A. Yes; that is the contract.

Q. Who handed this to you this morning?

A. It was handed to me from the table here.

Q. By Mr. Pierce?

A. Yes, sir.

Q. This is a duplicate original of the contract which you and Mr. Porter retained?

A. Yes, sir.

941 Solicitor for complainants offered the paper in evidence, which was marked Exhibit L and is as follows:

Memorandum of agreement, made and entered into this 25th day of June, A. D. 1884, by and between Drexel, Morgan & Co., of the first part, and Samuel M. Nickerson and H. H. Porter, of the second part, —:

Whereas Drexel, Morgan & Co. hold certain securities as collateral to the indebtedness of Henry Crawford, and the said Henry Crawford has agreed to cause or procure to be issued all the shares of the capital stock of the Chicago & Great Southern Railroad Company that can be lawfully issued, amounting, at the par thereof, to at least $1,200,000, and all the bonds that can now be lawfully issued under the first mortgage of the said Chicago and Great Southern Railroad Company, dated November 1st, 1881, to John C. New, in addition to those now outstanding, amounting to $1,000,000, and to transfer and deliver to the said Drexel, Morgan & Co. all the said shares and bonds in exchange for the shares of the Indiana & Chicago Railroad Company stock and Chicago & Block Coal R. R. Co. stock now held by them as additional collateral for his said indebtedness, and has authorized and empowered said Drexel, Morgan & Co. to make the sale of all their securities in their hands to the said Nickerson and Porter upon the terms herein set forth:

Now this agreement witnesseth:

942 First. The said Drexel, Morgan & Co. have agreed that in case said indebtedness, with interest and expenses thereon, remains unpaid at the end of sixty days from June 20th, 1884, they

will bargain, sell, assign, transfer, and set over to the said Nickerson and to the said Porter all the shares and bonds then held by them as collateral security for the payment of the indebtedness of the said Crawford, including therein, when received. the shares and bonds of the Chicago & Great Southern Railroad Company, which the said Crawford has agreed to procure to be issued and transferred for an amount equal to the indebtedness due to them by the said Crawford, including interest and other expenses, resulting from his default or growing out of said trust transaction, the said indebtedness being for an original principal sum of $350,000, to which it is roughly estimated that a sum of about $30,000 must be added to cover interest and other expenses.

Second. The said Nickerson and the said Porter hereby jointly and severally agree in consideration thereof to purchase the securities as above in case the indebtedness of the said Crawford shall remain unpaid at the end of sixty (60) days from the date aforesaid, and to pay the said Drexel, Morgan & Co. in cash for said securities the amount of the said indebtedness, with interest and the expenses, on or before the 15th day of January, 1885.

Third. It is understood and agreed that Drexel, Morgan & Co. assume no liability with respect to the delivery of the shares of
943 the capital stock and the mortgage bonds of the said Chicago and Great Southern Railroad Company, unless and until delivered to them by the said Crawford, and that the said Nickerson and Porter are not to be required to take any of the said securities unless the said shares and bonds are issued and transferred, as stipulated in the agreement of even date herewith between the said Crawford and the said Drexel, Morgan & Co.

In witness whereof the parties hereto have hereunto set their hands the day and year first above written.

(Signed) DREXEL, MORGAN & CO.

List of Securities Covered by the Foregoing Agreement and now in the Possession of Drexel, Morgan & Co.

$1,000,000 Chicago and Great Southern Railroad Co., northern division, bonds (1st mortgage).

8,648 shares Chicago and Block Coal R. R. Co. stock.

1,201 shares Indiana & Chicago Railway Co. stock.

The Chicago & Block Coal and the Indiana and Chicago shares as above are to be surrendered to Mr. Crawford on delivery to Drexel, Morgan & Co. of $492,750 of the Chicago & Great Southern R. R. Co. stock, being part of the $1,200,000 of said stock specified in the foregoing agreement.

Q. Was that contract extended in time?

A. It was not by Drexel, Morgan & Co. On the expiration of that contract we were notified by Drexel, Morgan & Co. that
944 they had sold and we had bought the securities in accordance with the contract.

Q. Notified how?

A. By letter.

Q. What did you do with the securities?

A. We had an option until the 15th of January to pay this money—that is, we could pay it on the 20th of August, or whenever that contract expired.

Q. Was that evidenced by any writing or letter, or anything of that kind?

A. Yes, sir.

Q. The whole thing was by correspondence?

A. Yes, sir.

Q. Have you brought in that correspondence?

A. I have not; I turned over everything to Mr. Porter.

Q. Mr. Porter has got all that?

A. I presume he has; all the documents and papers I turned over to Mr. Porter.

Q. You left New York shortly after this contract and came to Chicago, did you?

A. Yes, sir.

Q. Was that entered into before you left New York?

A. No, not until after I returned to Chicago.

Q. When did you get back to New York?

A. My impression is about the eighth or tenth of June.

Q. Was there any other contract entered into between you and Drexel, Morgan & Co., or Crawford, down to the 26th of December, 1884, between you and Porter or yourself with reference to these stocks and bonds, except that one in writing?

A. No, sir; not in writing.

Q. Did you ever see the contract which has been introduced in
evidence as Exhibit E, being the agreement dated December
945 26th, 1884, between Henry Crawford and H. H. Porter and
associates, hereinafter termed the syndicate, party of the second part?

A. Yes; I am familiar with it.

Q. You have seen that contract?

A. Yes, sir.

Q. I see that Samuel M. Nickerson is named here as a witness to the contract.

A. Yes, sir.

Q. You are the gentleman?

A. Yes, sir.

Q. Who were the associates of Mr. Porter named in this last contract?

A. I cannot recollect them all.

Q. You know some of them, don't you?

A. Yes, sir.

Q. Name who they are.

A. You mean subscribers to the syndicate?

Q. Yes; the gentlemen who composed the syndicate mentioned in that contract.

A. The contract, as I understand, was opened for subscriptions to any parties with whom we might agree.

Q. The contract recites in substance that on the 26th day of January the members of the syndicate had raised $500,000. I would like to know who those gentlemen were, if you know.

A. Mr. Porter was a subscriber; I am a subscriber; Mr. Robert Law, I think, is a subscriber; John M. Durand, Mr. Henry Seibert, of New York.

Q. David Dows?

A. His name was not on the syndicate agreement when I subscribed.

Q. Had he paid in his money at the time this contract was made—on the 26th of December, 1884?

A. Had who?

946 Q. Mr. Dows.

A. I don't know.

Q. How about A. J. Leith; was he a subscriber?

A. If so, it was after it went out of my hands.

Q. You don't know personally anything about that?

A. I haven't seen the subscribers' list since I subscribed myself to it.

Q. Do you know by conversation with Mr. Porter who the parties were—whether Mr. Dows——

A. I have heard Mr. Porter say that Mr. Dows was a subscriber.

Q. At how early a date?

A. I cannot answer that.

Q. Before the beginning of the present year?

A. I could not say what time it was.

Q. How about Mr. Leith?

A. I don't know what time he subscribed, nor what amount.

Q. Of course, if you know anything from Mr. Porter, Mr. Nickerson, that is proper evidence here. How about Isaac H. Wing?

A. I don't know.

Q. How about E. W. Winter?

A. I don't know.

Q. How about E. F. Lawrence?

A. I have learned from him that he had subscribed; I don't know——

Q. From whom?

A. From Mr. Lawrence, and I think Mr. Porter mentioned the same fact, that Mr. Lawrence had subscribed.

Q. What was your subscription to the syndicate?

A. $150,000.

Q. What was Mr. Porter's?

A. $250,000, I think. It may have been changed afterwards.

Q. What was Mr. Seibert's?

A. Mr. Seibert's, I think, was fifty.

947 Q. Mr. John M. Durand or J. N. Durand?

A. I don't recollect whether it was twenty-five or fifty—one or the other.

Q. How early did you make your subscription, Mr. Nickerson, with reference to Mr. Porter?

A. About the date of the papers.

Q. How early did you pay in your money—what have you paid in?

A. I paid within a week or ten days after the date of the subscription.

Q. Do you remember the date of the subscription?

A. The 26th of December, I think it is.

Q. Did the other people whom you have named as being subscribers—did they put in their money about the same time?

A. I presume they did; although I cannot answer that of my own knowledge; I did not have the collecting of it.

Q. Who was the treasurer of this fund raised by the syndicate?

A. Mr. Porter made the collections, I think; I paid my money to him.

Q. It has been testified here that the money was sent on to Morgan, Drexel & Co. to pay their debt somewhere near the 15th of January, 1885; do you know whether that was the money of the syndicate that was paid to Drexel, Morgan & Co.?

A. On January 12th the money was remitted to Messrs. Drexel, Morgan & Co.

Q. How much in amount?

A. I have a copy of the letter here; I will read it if you wish.

(Letter produced.)

948 Q. Where did you get this copy?

A. It was furnished me by Mr. Porter when I signed it; when I signed the original letter which went to Drexel, Morgan & Co. he gave me that copy.

Q. It is recited here "In accordance with the contract of Mr. S. M. Nickerson and myself with you, dated June 25th, 1884 (Mr. Nickerson's interest in which has been purchased by me), and as further referred to you in your letters of August 13th, 19th, and 27th, and Oct. 24th, 1884, I herewith enclose you drafts of First National Bank of Chicago as follows:" Now, I ask you about that recital, as to your interest in the contract of June 25th having been purchased by Mr. Porter, was that so?

A. Yes, sir.

Q. Was that evidenced by writing?

A. Between myself and Mr. Porter?

Q. Yes.

A. No, I think not; at that date, on January 12th, he furnished the money to take up the securities from Drexel, Morgan & Co.

Q. You furnished your money too, didn't you?

A. A portion of it; yes; my subscription to the syndicate. It was the syndicate's money which he used.

Q. What do you mean, then, when you say your interest in the contract with Drexel, Morgan & Co. was purchased by Mr. Porter? Do you mean that Mr. Porter had purchased it of you for the syndicate—that is, you had made a new deal under this contract of December 26th, and that is what you mean by that?

949 A. Yes, sir.

Q. Mr. Porter took control?

A. Yes, sir.

Solicitor for complainants offered the letter in evidence, which was marked Exhibit M, and is as follows:

(Copy.)

JAN. 12TH, '85.

Messrs. Drexel, Morgan & Co.,
Cor. Wall and Broad St., New York city.

GENTLEMEN: In accordance with the contract of Mr. S. M. Nickerson and myself with you, dated June 25th, 1884 (Mr. Nickerson's interest in which has been purchased by me), and as further referred to in your letters of August 13th, 19th, and 27th, and October 24th, 1884, I herewith enclose you drafts of First National Bank, Chicago, as follows:

No. 662,251 on 4th National, N. Y.	150,000	
" 44,841 on Central National, N. Y.	100,000	
" B 114,154 on National City, " "	142,363	24
Total	$392,363	24
Being in payment of the amount due you, as per your account, to November 1st, 1884	287,519	26
To which is added interest to Jan. 14th (75 days)	4,843	98
Total	$392,363	24

Will you please send me at once by express the stock and bonds of the Chicago and Great Southern R. R., together with Mr. Crawford's notes cancelled, and an order on the Union National
950 Bank, Chicago, for the securities they hold, which are, I understand, eight hundred thousand dollars of Chicago and Great Southern bonds unsigned by the trustee. In sending these please address them to H. H. Porter, and put the whole in another wrapper, addressed to the First National Bank, Chicago, sending it by Adams Express, and valued at $50,000.00, express charges to be collected on delivery to 1st National Bank.

Mr. Crawford is not here to-day, but I have assumed there can be no question between you and him as to the amount now due you.

Will you also please send me, enclosed in the same package with the bonds, &c., all the papers relating to this road, abstracts of title, &c., and any other information you may have retained. Among these papers, I understand, are various orders from Mr. Dull, Mr. Crawford, and Mr. New, with reference to the issuing of bonds, &c. I have not before me now just what they are, but presume you have them all together, and I shall be much obliged if you will take special pains to see that everything is sent.

I will also thank you if you will telegraph me on receipt of this letter, addressing me at room 38, Portland Block, Chicago.

Very truly yours,
(Signed) H. H. PORTER.

I concur in the above, and authorize the delivery to Mr. Porter of the securities referred to.

(Signed) SAM'L M. NICKERSON.

951 Q. Now, from the time you had made this contract of June 25th down to the contract of December 26th, 1884, who did the negotiating with Mr. Crawford which led up to this contract of December 26th?

A. I done it in part, Mr. Porter in part.

Q. Were you one of the gentlemen who went over the line of the road?

A. At what time?

Q. At any time. I mean prior to December 26th.

A. I have only been once, and that was this last August. I had never been over before.

Q. You were not over before that time, this present year?

A. No.

Q. Is there any contract between the members of the syndicate about where these bonds are—that is, as to where these bonds now are?

A. Between whom?

Q. Between the members of the syndicate with relation to the bonds—the disposition of them?

Objected to by solicitor for complainant.

Q. Is there any contract between the members of the syndicate with reference to these bonds—the $1,200,000 of bonds and the stock?

A. There is no written contract that I am aware of.

Q. None at all; where are the bonds? Do you know where the bonds actually are?

A. They were delivered to Mr. Porter by Drexel, Morgan & Co. in accordance with the letter of instructions.

952 Q. What did Mr. Porter do with them?

A. I presume that he has them.

Q. Are they in the First National Bank, I will ask you?

A. I don't know.

Q. You don't know where they are?

A. No, sir.

Q. Did Mr. Porter give you a receipt for your money when you paid him?

A. My subscription to the syndicate?

Q. Yes.

A. He did.

Q. Have you got that receipt?

A. I have it at my office.

Q. That is one of the papers I would like to see.

A. I will furnish it.

Q. Were the receipts printed?

A. No, I think it was written; when I gave him my check, and my check-book will show the date, whatever the date was, early in

January, he gave me the receipt that he had received my amount of subscription to the syndicate, $150,000.

Q. Do you mean to say, Mr. Nickerson, you have never seen any agreement between the members of the syndicate with themselves as to what shall be done with these bonds?

A. No, sir.

Q. You never have?

A. I think the syndicate provided that Mr. Porter should be the manager of the whole matter. I think that is explained.

Q. In this contract of December 26th?

A. Yes, sir.

Q. That is the only contract you know of where there is anything in writing or print?

A. Yes, sir.

Q. That has reference to the disposition of these bonds and the stock?

A. Yes, sir.

953 Q. At the time this contract was entered into, do you know whether or not the statement therein is true, that the sum of five hundred thousand dollars had been raised by subscription by the members of the syndicate at the time the contract was entered into; do you know whether that was true or not?

Mr. Pierce: Do you mean the contract between Porter and Crawford?

Col. Cooper: Yes.

A. That the money had been actually paid on the date of it?

Q. No; I mean that it had been raised by subscription?

A. Mr. Porter, I think, had applications from parties for much more—a larger amount than was called for by the syndicate—and he apportioned it as he thought best.

Q. This syndicate was not incorporated in any way; it was simply a voluntary association of gentlemen who subscribed to the venture?

A. Yes, sir.

Q. Has this contract been carried out so far as all the payments that are mentioned to Drexel, Morgan & Co.? The contract is in force to-day, in process of being carried out?

A. Yes, sir.

Q. I mean the contract of December 26th, 1884.

A. Yes, sir.

Q. What inquiry did you make before this contract was entered into of Mr. Crawford, about the statutes of the property and so forth?

A. In conversation with Mr. Crawford and Mr. Porter, who had been over the road several times.

Mr. Pierce: Which contract do you refer to, Colonel?

Col. Cooper: The contract of December 26th, 1884; you 954 knew at that time that Mr. Crawford was president and a director of the company, on December 26, 1884?

A. Yes, sir.

Q. You had had to do with him for a period of some time, had you not; that is, you had talked with him about this road prior to the time of your departure for Europe, had you not?

A. No, sir.

Q. You did not know about it before that?

A. I knew he was building a road, but I had no interest in it in any way.

Q. But you knew that there were previous relations with Mr. Crawford?

A. Yes, sir.

Q. Or then present relations with Mr. Crawford?

A. Yes, sir.

Q. At how early a date did you go to Europe?

A. In November, 1883, and returned in June, 1884.

Q. And prior to that time you knew that Mr. Crawford was engaged——

A. I knew he was building this road.

Q. Did he ever show you the construction contract he had?

A. No, sir.

Q. Hadn't you seen it before the 26th of December, 1884?

A. Yes, sir.

Q. Before you entered into this last contract?

A. Yes, sir.

Q. You had seen that?

A. Yes, sir.

Q. Had you ever looked into the record-book of the company—this book that is now before you?

A. No, sir.

Q. Did you ever have anybody to examine it for you?

A. No, sir.

Q. You did not have charge of that matter?

A. The whole detail of the matter was left to Mr. Porter.

955 Q. Do you know whether or not Mr. Porter had an attorney who was looking after the matter for him and inquiring into the matter of titles?

A. I don't know.

Q. Didn't he ever tell you?

A. No, sir.

Q. Mr. Porter never told you?

A. Whether he made a personal examination or by an attorney I don't know, only he stated to me he had examined the papers and the title to the property, and so forth.

Q. Did you know William A. Starin?

A. I have met him; yes; I haven't seen him, I don't think, for two years.

Q. Before you went to Europe?

A. Before I went to Europe I had occasion to meet him occasionally.

Q. Do you know what relation he sustained to Mr. Crawford—that is, that he was in his office?

A. That he was in his office; yes.

Q. Didn't you know Mr. Starin was president of the company some time prior to the time you went to Europe—of Mr. Crawford's company?

A. If I did I have forgotten about it now.

Q. What was your understanding as to who was president of the company before you went to Europe?

A. I don't know that I ever inquired.

Q. Who did you understand to have the control and management of the affairs of the company; I mean before you went to Europe?

A. Of this Great Southern road?

A. Yes.

A. I could not answer that question; I don't know what Mr. Crawford's arrangements were.

956 Q. Did you or not understand Mr. Crawford to have control and management of this company and the property?

A. I understood he was building the road.

Q. Didn't Mr. Crawford consult with you when he first went into this matter; talk with you about it, I mean?

A. Merely incidentally, in a general way.

Q. With reference to the going into the road or being in it prior to the time you went to Europe?

A. Yes, sir.

Q. Did he ever have anything to say to you in a business way with reference to giving him any assistance or anything of that kind before you went to Europe?

A. No, sir.

Q. He did not?

A. Not on this road.

Q. You say that you were told by the bank that the bank had a lien on these securities?

A. Yes, sir.

Q. In what shape was that lien, evidenced by writing?

A. By an order from Mr. Crawford.

Q. Have you got that with you?

A. No; I think that was surrendered when the syndicate agreement was made with Mr. Crawford?

Q. This agreement, as it states in section 7, supersedes and is substituted for any and all agreements, etc.?

A. Yes, sir.

Q. This agreement closed up everything else, and you made this arrangement with Crawford as a substitute for all arrangements that had been theretofore made?

A. Yes, sir.

Q. Are you a stockholder or stock subscriber in the Lake Michigan and Ohio River railroad?

A. I am not.

957 Q. You are not a director therein?

A. No, sir.

Q. You have no connection with it?

A. No, sir.

Q. Have you not had talks with Mr. Porter about issuing these not; that is, you had talked with him about this road prior to the time of your departure for Europe, had you not?

A. No, sir.

Q. You did not know about it before that?

A. I knew he was building a road, but I had no interest in it in any way.

Q. But you knew that there were previous relations with Mr. Crawford?

A. Yes, sir.

Q. Or then present relations with Mr. Crawford?

A. Yes, sir.

Q. At how early a date did you go to Europe?

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Q. Did he ever show you the construction contract he had?

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A. That he was in his office; yes.

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Q. Did he ever have anything to say to you in a business way with reference to giving him any assistance or anything of that kind before you went to Europe?

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Q. Have you got that with you?

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Q. This agreement, as it states in section 7, supersedes and is substituted for any and all agreements, etc.?

A. Yes, sir.

Q. This agreement closed up everything else, and you made this arrangement with Crawford as a substitute for all arrangements that had been theretofore made?

A. Yes, sir.

Q. Are you a stockholder or stock subscriber in the Lake Michigan and Ohio River railroad?

A. I am not.

957 Q. You are not a director therein?

A. No, sir.

Q. You have no connection with it?

A. No, sir.

Q. Have you not had talks with Mr. Porter about issuing these bonds and stock for the purpose of controlling the Chicago & Great Southern railroad as part of that road?

Objected to by solicitor for complainant.

A. Mr. Cooper, I very naturally, having an investment of a hundred and fifty thousand dollars in the syndicate agreement, would talk with Mr. Porter over a great many things in connection with it.

Q. As I understand the matter, there was a railroad by that name, the Lake Michigan & Ohio River Railroad Company, organized?

A. Yes, sir.

Q. And that .that company is now engaged in building its road from Yeddo, Indiana, at the south towards Brazil? What I ask you is whether or not you are interested in that project in any way?

Solicitor for complainant objected to the question for the reason that none of the parties, and particularly the defendants, Swan and Atkinson, have no interest in that matter.

A. My only interest is as indicated by the syndicate agreement.

Q. Is this being done in pursuance of the syndicate agreement—that is to say, the agreement of December 26th, 1884?

A. It is being done by Mr. Porter.

958 Q. Is it being done in pursuance of this agreement of December 26th, the provisions of that agreement?

Solicitor for complainant objected to the question for the reason that the witness has already stated he has no interest in the Lake Michigan & Ohio River railroad, and he is not presumed to know, and because the provisions of that agreement will show for themselves.

A. As I have stated, I have no interest in that railroad which is being built except as I may have under that syndicate agreement.

Q. I will ask you whether it is understood between you and Mr. Porter that this is being done for the benefit of the syndicate, the building of that road from Yeddo south?

A. For the benefit of the syndicate?

Q. Yes.

A. I presume it will come into that agreement eventually.

Q. Why do you so presume?

A. From talks with Mr. Porter.

Q. Who has furnished the money for the building of that road; who is now furnishing it?

Objected to by solicitor for complainant.

A. I will not answer that.

Q. I will ask you whether the members of the syndicate are furnishing the money?

A. I am not.

Q. I will ask you whether——

A. I can only answer for myself.

Mr. **Pierce**: I object to the question, and will state to the witness

959 that he is not to answer any question concerning which he hasn't any information.

Col. COOPER: I will ask you whether, to your knowledge, any of the other members of the syndicate, outside of Mr. Porter, are furnishing the money to build that road south?

A. Not to my knowledge.

Q. Do you know nothing about it?

A. No, sir.

Q. Do you mean to say you don't know who is furnishing the money there?

A. I assume Mr. Porter is.

Q. Why do you so assume?

A. From the fact that he is building the road.

Q. Do you know how he is building the road, whether under a contract or not with the company?

A. With what company?

Q. With the Lake Michigan & Ohio River Railroad Company?

A. I do not; I am not a member of that board of directors, and have nothing to do with the road.

Q. You have never subscribed to the stock in any way?

A. No, sir.

Q. You have no claim on Mr. Porter as a member of the syndicate, then, I understand, and you have no interest in that road.

Solicitor for complainant objected to the question on the ground that the contracts speak for themselves.

A. Except as indicated by the syndicate contract.

Q. Now, take what is indicated by the syndicate contract and your talks with Mr. Porter, is it or not understood between you and Mr. Porter that you, as a member of the syndicate, shall have an interest in the Lake Michigan & Ohio River railroad?

960 Solicitor for complainant objected to the question because it is not competent for the witness to sit here and construe contracts for counsel.

Q. I ask for an answer to the question.

A. I object to answer it.

Q. Why do you object to answering it?

A. Because there may be private matters between myself and Mr. Porter—I may be interested with him in other matters, which do not pertain to this matter which you are investigating.

Q. Is that the only reason you have for not answering?

A. Yes, sir.

Q. (Question repeated by reporter.)

A. I will answer that very frankly, that all the members of the syndicate in that agreement will probably eventually, although I do not understand anything has been completed as yet, will have an interest in that. Is that sufficient?

Q. That is it. Where were the negotiations which led up to the agreement of December 26th principally held?

A. Here in Chicago.

Q. What place?

A. Mostly in my office, probably.

Q. In the First National Bank?

A. Yes, sir.

Q. Between Mr. Crawford, Mr. Porter, and yourself?

A. Yes, sir.

Q. Did you look into the stock-book of the company before you closed this contract; did you personally?

A. I did not.

Q. Or know of it being done?

A. No, sir.

Q. All that thing, as I understand from you——

961 A. All the details were left to Mr. Porter.

Q. The present ownership and interest in the stock and bonds of the Chicago and Great Southern Railroad Company, referred to in the contract of December 26th, 1884, stands upon this contract of that date?

Objected to by solicitor for complainant.

A. So far as I am concerned, yes.

Q. You know of no other arrangement?

A. No.

Q. And no other contract since the contract referred to?

A. No.

Q. And, as I understand you, the interests of the members of the syndicate are provided for in this contract and not elsewhere?

A. As I understand it, yes.

Q. Before this contract was entered into was there any talk or investigation on the part of Mr. Porter or yourself or both of you with reference to extending this road south, provided you could ultimately get it.

Mr. PIERCE: Excuse me, Colonel, which contract do you refer to?

Col. COOPER: The contract of December 26th.

A. It was talked of indefinitely but nothing positive.

Q. What did you learn about the debts of the Chicago & Great Southern Railway Company prior to this contract of December 26th?

A. Only as stated to us by Mr. Crawford and from some investigations Mr. Porter had made.

Q. Did you have any understanding what those debts were, what they were for, how they had been incurred?

A. Oh, yes; in a general way.

962 Q. What did you understand with reference to that?

A. That they were some few liens and claims which the syndicate contract provides for.

Q. Outside of that; outside of liens?

A. There was nothing provided for excepting——

Q. I am talking about what you provided for in the contract.

A. No agreement was made to pay anything except what the syndicate contract is.

Q. What I am asking you is what information you had as to the financial condition of that road with reference to its indebtedness before this contract was made?

A. I understood in a general way that there were debts against the company.

Q. Now, I will ask you what did you understand those debts were contracted for; what was the occasion of the indebtedness?

A. It was the natural debts which a railroad company or a contractor would make in constructing a road.

Q. In other words you understood they were debts for construction of the road, did you not, Mr. Nickerson; unpaid debts for the construction of the road?

A. Yes, sir.

Q. Had you heard anything about the Cleveland Rolling Mill Company's claim?

A. If so, I have forgotten about it.

Q. For iron furnished?

A. I don't recollect now.

Q. You don't recollect the details of that?

A. I don't recollect the details of any of those things; that was left entirely to Mr. Porter.

Q. You knew at the time you made the contract of December 26th, 1884, or had been informed, that the road at that time was in the hands of a receiver?

A. Yes, sir.

963 Q. Were the negotiations going on with Mr. Crawford at the time the road was put in the hands of a receiver?

A. At what time was that?

Q. That was in October—October 27th—1884, I think.

A. Yes; the negotiations with Mr. Crawford commenced as soon as his time with Drexel, Morgan & Co. expired.

Q. Did you know anything about the application for the appointment of a receiver?

A. I did not until after it was accomplished.

Q. Was it or not done in pursuance of any understanding between you and Mr. Porter?

A. No, sir.

Q. Did you know it was going to be done?

A. No, sir; I didn't know anything about it until it was done.

Q. Who told you about it then?

A. I think Mr. Shumway, the receiver, after he had been appointed.

Q. Did you know anything about the Smith Bridge Company claim for bridges on the line of the road before the contract of December 26th?

A. I think their attorney was in to see me one day and stated that he had a claim of that kind and I referred him to Mr. Porter; I had no particular conversation with him.

Q. Did you know anything about the claim of the Bessemer Steel Company?

A. I did not.

Q. All that matter, as I understand, you left to Mr. Porter to attend to?

A. Yes, sir.

964 Cross-examination by Mr. PIERCE:

Q. Mr. Nickerson, so far as the purchase of the bonds and the stock of this railroad company —, your attention was first called to it in the month of June, 1884, on your return from Europe?

A. Yes, sir.

Q. Where you had gone in the month of November previous?

A. Yes, sir.

Q. Now, you say that Mr. Porter and the bank had been writing to you and giving you the status of the bonds and stock which was pledged to Drexel, Morgan & Co.?

A. Yes, sir.

Q. You say that the First National Bank had a second lien—that is, a lien behind Drexel, Morgan & Co.?

A. Yes, sir.

Q. For how much?

A. For about $300,000.

Q. What was that for?

A. For money loaned.

Q. To whom?

A. To Mr. Henry Crawford.

Q. What sort of a pledge or lien had he given—a written lien?

A. A written order, my recollection is, on Drexel, Morgan & Co., when they had been paid the amount of their lien, to turn the securities over to the First National Bank.

Q. In other words, it was a regular lien, subject to the lien of Drexel, Morgan & Co.?

A. Subject to the lien of Drexel, Morgan & Co.

Q. In writing?

A. In writing; yes, sir.

Q. State whether that debt was justly due from Mr. Crawford to the company.

A. It was due at that time.

965 Q. Now I will ask you to state whether on the 25th of June, when you and Mr. Porter entered into this agreement with Drexel, Morgan & Co., if you knew anything at that time about the debts or the condition of the road.

A. Nothing in detail; no; it would be very general.

Q. And that contract had reference alone to the purchase of the bonds and stock of the company?

A. Yes, sir.

Q. From your statement the First National Bank had a lien on these bonds for $300,000?

A. About that.

Q. That was June 25th, 1884; what did you understand at that time the lien of Drexel, Morgan & Co. was?

A. I think the principal was $350,000, with interest and expenses.

Q. Making about $400,000?

A. Making about $400,000.

Q. That made a lien on these first-mortgage bonds of $1,200,000 about $700,000?

A. Yes, sir.

Q. You stated that Morgan, Drexel & Co. had already advertised to sell those bonds and stock?

A. Yes, sir.

Q. Under their pledge?

A. Yes, sir.

Q. And it had been postponed—the sale had been postponed once?

A. I think it had once—yes—before I returned.

Q. Do you know at whose request or under whose effort that was done?

A. I should assume by——

Col. **Cooper**: Don't assume anything.

Mr. **Pierce**: If you don't know.

A. I don't know; it was before I returned.

Q. At any rate you understood they had already been advertised?

966 A. Yes, sir.

Q. You got word from your bank and from Mr. Porter of this fact that it was necessary for the First National Bank to take some steps to protect themselves and their lien on this road?

A. Yes, sir.

Q. So that on the 25th of June, 1884, you and Mr. Porter made the contract which has already been given in evidence?

A. Yes, sir.

Q. Now I will ask you if up to the time of making that contract you had ever seen the record of this Chicago and Great Southern Railway Company?

A. I had not.

Q. I will ask you if up to that time you had seen Mr. Crawford's construction contract with the railroad company?

A. Up to the 25th of June?

Q. The 25th of June, 1884; yes.

A. I think that I had.

Q. Had you had any talk with any of the creditors of the company up to that time—that is, any of the general creditors?

A. I had not.

Q. Did you know anything about the amount of the outstanding indebtedness of the company or who had it or anything about it?

A. I did not.

Q. Or what they were for?

A. I did not.

Q. Now at the time you made this contract, you and Mr. Porter, with Drexel, Morgan & Co., for the purchase of these bonds and stock, I will ask you if that was a transaction made in good faith on your part?

A. It certainly was.

967 Q. And if at that time you had ever heard of any taint of any sort or description attaching either to the bonds or stock of the company?

Col. **Cooper**: What do you mean by "taint?" If the witness understands it, all right.

The **Witness**: I think I understand it. I had not. I supposed that the bonds were good and valid.

Mr. **Pierce**: I will ask you if up to that time you had any reason of any character or description for thinking to the contrary?

A. I had not; no.

Q. You say on the 25th of August, or two months after the execution of that contract, under one of the terms of the contract, if Mr. Crawford failed to pay the amount that was due Drexel, Morgan & Co. at the end of sixty days from the execution of that contract, which would bring it on the 25th of August, 1884, that you and Mr. Porter would purchase the bonds. You stated, I think, a little while ago you received notice from Drexel, Morgan & Co. that they had sold you the bonds under that contract?

A. Yes, sir.

Q. When was it you received that notice?

A. It was in a very few days after the expiration of the time.

Q. After the expiration of the sixty days mentioned there in which Mr. Crawford was to pay the indebtedness?

A. Yes, sir.

Q. Then on the 25th of August the bonds and stock became the property of yourself and Mr. Porter?

968 Objected to by solicitor for defendants.

A. Yes, sir.

Q. They became your property?

A. Yes, sir.

Q. But under the terms of the contract you spoke about having an option; you mean by that you had the privilege of buying?

A. Simply for the payment of the money.

Q. You had the privilege of paying any time up to the 15th of January, 1885?

A. They took mine and Mr. Porter's obligation to pay the money on or before the 15th of January.

Q. 1885?

A. 1885. We could have paid it on the 25th of August, or could take the additional time if we required it.

Q. As a matter of fact you took the additional time and the money was paid?

A. Substantially, yes.

Q. I will ask you if, in the month of August, at the time of the expiration of these sixty days, and at the time you got your notice from Drexel, Morgan & Co., that they had sold you these bonds and stock, if up to that time you had any knowledge of any infirmity or any taint existing on these bonds or stock?

A. I certainly had not.

Q. I will ask you if at that time you had any knowledge or information or reason to believe there was any lien on the railroad property ahead of the bonds?

A. Except to a very limited amount.

Q. And what was that for; right of way or something?

A. Mr. Crawford admitted to me that there might be a few liens and claims ahead of the bonds for right of way, I think.

969 Q. With that exception—that is, with the exception of anything of that kind—you know of no liens or anything ahead of the mortgage on this property?

A. No, sir.

Q. In the month of January, 1885, Mr. Porter came to you with the letter which has been introduced in evidence, a copy of it (Exhibit M). He came to you with this letter, did he?

A. Yes, sir.

Q. And you endorsed on the letter sent to Drexel, Morgan & Co. this clause: "I concur in the above letter, and authorize the delivery to Mr. Porter of the securities referred to. Samuel M. Nickerson." In that letter Mr. Porter states in parentheses here that Mr. Nickerson's interest in it—that is, in the bonds and stock—"has been purchased by me"—that is, Porter; that was true, was it, at that time?

A. Yes, sir.

Q. So Mr. Porter transmitted the money to pay for these bonds and stock?

A. He did.

Q. And they were sent to him?

A. Yes, sir.

Q. I will ask you to state now, Mr. Nickerson, what creditor or creditors of the company, if any, had come to you, and that you knew at the time this contract was made, and the money was paid by Mr. Porter for these bonds?

A. Do you mean in January?

Q. Yes.

A. I think the attorney of the Smith Bridge Company had been to me.

Q. You think the attorney of the Smith Bridge Company came to you?

A. Yes, sir.

970 Q. What did he claim, Mr. Nickerson?

A. He claimed that there was an amount due on the bridge which their company had furnished to the road, and claimed that it was a lien ahead of the bonds. I told him that was a matter I was not competent to decide.

Q. In making that claim did he make any claim that the bonds were fraudulent or void?

A. No, sir; none whatever.

Q. Or that the mortgage was invalid?

A. None whatever.

Q. He simply claimed that they had constructed a bridge across the Wabash, was it, and that he had a lien which was ahead of the mortgage?

A. Yes, sir.

Q. I will ask you whether there were any other creditors you saw?

A. There may have been some others; if they did they merely stated their business, and I referred them to Mr. Porter.

Q. Did any of these creditors, or anybody coming to you, ever claim that the mortgage was invalid or that the bonds were illegal?

A. They did not.

Q. Or did anybody ever claim to you that the contract was fraudulent—that is, the construction contract of Mr. Crawford under which he built the road?

A. Not to me; no, sir.

Q. I will ask you if you ever heard any claim made against the validity of the bonds until long after you had bought the bonds and paid for them, or they had been paid for, in the month of January, 1885?

A. I did not; no sir.

Q. You never heard anything of the kind?

A. No, sir.

971 Q. Do you remember, Mr. Nickerson, what became of that lien that the bank had, that written lien Mr. Crawford gave which was next to the Drexel, Morgan & Co. claim?

A. I think it was surrendered to Mr. Crawford when this new deal was made.

Q. When was that, in December, 1884?

A. Yes, sir; about the date of the syndicate contract.

Q. What did Mr. Crawford give you in place of it?

A. He assigned to the bank all the interest which would be coming to him under the syndicate contract.

Q. Was that assignment in writing?

A. Yes, sir.

Q. Where is it?

A. On the back.

Q. You can produce that, too, can you?

A. Yes, sir.

Q. I will ask you if Mr. Crawford still owes all this money you have been talking about?

A. He does. I have a note for the amount with his assignment of his interest in the syndicate contract as collateral.

Q. I will ask you whether that is an indebtedness contracted in good faith?

A. It was.

Q. Have you actually let him have the money?

A. He received every dollar which his note calls for.

Q. And that is about how much, do you say?

A. About three hundred thousand dollars.

Q. And he has assigned his interest in what is called the syndicate contract here to secure the payment of that indebtedness due to the bank?

A. Yes, sir.

Q. I will ask you if the assignment was not made at the time,

and if it was not done at the same time this syndicate con-
972 tract was entered into?

A. On the same day.

Q. It was all done on the same day?

A. My impression is the date of the assignment is the same date as the syndicate contract.

Q. As a matter of fact, it was all done on the same day and at the same time?

A. Yes, sir.

Q. I will ask you to send that in.

A. You will have to apply to Mr. Gage; I am going away this afternoon, and any papers which he has he has charge of them for the bank.

Col. Cooper: Have you had any correspondence with Drexel, Morgan & Co., or with any other person, in reference to the purchase of these securities?

A. We necessarily had more or less correspondence before the contract was made with Drexel, Morgan & Co.

Q. Have you copies of those letters?

A. I have not any of them.

Q. Who has them?

A. I presume Mr. Porter has them; I turned over to Mr. Porter, when this syndicate agreement was signed, all the papers, correspondence, and everything which I had.

Mr. Pierce: I will ask you if Mr. Crawford did not put in some additional securities in what is called this last deal, under the last agreement which has been read, if he did not put in some additional property beside a mortgage—the Union Coal Company?

A. He did.

Q. Agreed to a number of other things, to have this construction contract canceled?

973 A. Mr. Porter named the price which he would pay for the road, which he said was $750,000, but with that he coupled that Mr. Crawford should convey to him or to the syndicate the coal property.

Q. That is, the Union Coal Company's property?

A. The coal lease, and everything connected with the coal business, and with the railway, as additional, which was not covered by the bonds—the bonds which we bought from Drexel, Morgan & Co.

Q. And he surrendered his right to the income bonds of the railroad?

A. Mr. Crawford agreed, and, as I understand, has assigned all of his right to the income bonds, or any other bonds or stock which might be coming to him, and agreed to cancel his construction contract with the road, which I understand has been done.

Q. So that the object in this last agreement was to take in all that stuff?

A. Take in everything.

Q. And the other things which are enumerated in there, which I have not called your attention especially to?

A. Yes, sir.

Q. I will ask you, Mr. Nickerson, why that was done?

A. Well, although Mr. Porter and myself undoubtedly had the legal right to have taken all of the stock and bonds when we paid Drexel, Morgan & Co. the amount of their debt, yet it was understood between myself and Mr. Porter that the bank's claim should be protected. That is our second lien, and in negotiating with them and Mr. Crawford, Mr. Porter said he would pay $750,000 for the entire property, including the coal interest and everything pertaining to it.

974 Q. So as to clean up everything straight and clean?

A. So as to clean everything up, but that he wanted to be guaranteed against liens and claims which might be ahead of the bonds, and as the syndicate contract provides you will see in the first place he is only to pay $750,000.

Q. So that if there are any liens to be paid ahead of the bonds they come out of Mr. Crawford's pocket-book—that is, the coal property?

A. Yes; or out of his surplus, whatever it may be.

Q. It first comes outside of Mr. Crawford's outside property, doesn't it—it is first to come out of Mr. Crawford's coal property?

A. The coal property was put in as additional property not covered by the bonds.

Q. And it first comes out of that?

A. It first comes out of that.

Q. If that is exhausted, then it next comes out of the bank, doesn't it?

A. Next it comes out of the bank.

Redirect examination by Col. COOPER:

Q. Mr. Nickerson, how much did Mr. Crawford owe the bank on the 26th of December, 1884?

A. About $300,000; something less than that; I don't remember exactly.

Q. How long had he owned the bank that money?

A. He had been owing it for some considerable time.

975 Q. On account of what did he owe the bank?

A. On account of money loaned.

Q. For what purpose?

A. A large part of it, I understand, went into the Chicago and Great Southern road, for which he put up other securities at the time.

Q. Don't you know personally that the money that he owed the bank was advanced to him in building what is now known as the Indianapolis division of the Louisville, New Albany and Chicago railway?

A. Only part of it.

Q. How large a part of it?

A. Well, say—of course I didn't keep Mr. Crawford's accounts; I could not tell what disposition he made of the money; but I should say at least one-half of it; perhaps one-half of it was from old indebtedness and the other was from new; I may be mistaken in that.

Q. When did you begin to loan him money on account of the Chicago and Great Southern—when did the bank?

A. We did not loan him on account of the Chicago and Great Southern; we loaned him money on collateral security.

Q. What collateral security?

A. He had up at one time a large amount of stock of the Louisville, New Albany and Chicago railroad.

Q. What else did you have—what security did the bank have on the 26th of December, 1884, for the $300,000 which Mr. Crawford owed to the bank before any change was made?

A. We had, first, our second lien, subject to Drexel, Morgan & Company's claim, on this $1,200,000 of bonds and stock, or
976 the securities which were in their hands.

Q. What else did you have?

A. We had some other securities.

Q. What were they?

A. I could not tell you definitely what they were; there were some stocks.

Q. How much in amount?

A. I could not tell you without referring to the books or papers.

Q. Can't you tell generally?

A. Well, I should say perhaps there was 4,000 shares of Louisville, New Albany and Chicago stock at that time.

Q. Par value $400,000?

A. The market value at that time was about 15 or 16.

Q. The par value was $400,000—a hundred dollars a share?

A. Yes.

Q. What else did you have beside the 4,000 shares of Louisville, New Albany and Chicago stock as collateral security for $300,000?

A. I don't remember now.

Q. Who would know about that?

A. Well, it would be a matter of recollection, if Mr. Gage remembers about it, because when we turn over securities we have no further record of them; the collateral note specifies the securities.

Q. You say about half of this $300,000, your recollection is, you loaned to Mr. Crawford to go into the Chicago and Great Southern railroad?

A. I assume that it went into the Chicago and Great Southern railroad for the reason that he was building the road at that time.

Q. What securities did he put into your hands at that time
977 for the money?

A. He had this security of the Louisville, New Albany and Chicago and his other securities, whatever they may have been.

Q. When did he put into your hands the security of the second lien on these bonds and stock of the Great Southern?

A. I cannot state the date, for I think it was while I was away.

Q. I will ask you, Mr. Nickerson, why that was done?

A. Well, although Mr. Porter and myself undoubtedly had the legal right to have taken all of the stock and bonds when we paid Drexel, Morgan & Co. the amount of their debt, yet it was understood between myself and Mr. Porter that the bank's claim should be protected. That is our second lien, and in negotiating with them and Mr. Crawford, Mr. Porter said he would pay $750,000 for the entire property, including the coal interest and everything pertaining to it.

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Q. When did he put into your hands the security of the second lien on these bonds and stock of the Great Southern?

A. I cannot state the date, for I think it was while I was away.

978 Q. Now, do you know what was done in your bank, with reference to looking into the affairs of the Chicago & Great Southern Railway Company, when you took that second lien on those bonds and stock?

A. I think we went generally upon the assumption that Drexel, Morgan & Co. had investigated the security, and that it was satisfactory to them. and if it was satisfactory to them for a first lien it would be to us for a second.

Q. They took it for three hundred and fifty thousand dollars, a first lien?

A. Yes, sir.

Q. You had, you say, three hundred thousand dollars against Crawford in addition to that?

A. Yes, sir.

Q. In addition to the Drexel, Morgan & Co. lien? Is that the way you do business at your bank; is that the reason why you assume that? I want to know if why you assume—that is, because that is the way you do business in your bank?

Solicitor for complainant objected to solicitor for defendants asking the question generally as to how the witness does business in his bank; if he wants to know how he did business in this case it is all right.

A. I think I can answer that, Mr. Cooper, satisfactory to all parties; that our bank and every bank which deals in bonds and securities buys the bonds—say of the Chicago and Northwestern railroad or the Milwaukee & St. Paul railroad, or any other railroad that is in good credit and standing—assuming that the bonds are legal.

979 Q. Now, suppose you are not buying the bonds of a railroad that is in good standing and all right, which we all understand, but are buying the bonds of a new road, which have no market value; how do you do then?

A. We were not buying them.

Q. You were taking a lien on them?

A. We were taking a second lien upon them and were willing to assume that Drexel, Morgan & Co. in making their loan had investigated the question and that the bonds were legal.

Q. When the company took the assignment of Crawford's interest in this contract, of December 26th, 1884, what did the bank give up to Mr. Crawford at that time in place of it?

A. It gave up the securities that we then held.

Q. Do you know how much the market value of them was in a general way?

A. I could not without knowing what the market price of Louisville, New Albany & Chicago was at that time, and I do not remember now.

Q. There was something else besides Louisville, New Albany & Chicago?

A. Nothing of any importance.

Q. There was not anything of any importance?

A. No; nothing of any importance.

Q. You gave yours up to Mr. Crawford?

A. Yes, sir.

Q. Wasn't that a part of a new deal between you, Mr. Porter, and Mr. Crawford, which culminated in the syndicate contract?

A. Our understanding with Mr. Crawford was that when he assigned all of his interest in the syndicate contract to the bank as collateral that we should and did give up the other securities,
980 which we then held.

Q. What are Mr. Porter's relations to the First National Bank?

A. He is a director.

Q. And a large stockholder?

A. Yes, sir.

Q. What are your relations?

A. I am president and a stockholder to a moderate extent.

Q. A stockholder to only a moderate extent, do you say?

A. I have seventy-five hundred shares.

Q. A hundred dollars a share?

A. Yes, sir.

Q. How many shares are there in the bank, all told?

A. 30 thousand.

Q. You say that this statement in the letter, in parenthesis, in substance, that your interest in that contract had been purchased by Porter—on your cross-examination you say that is true; on your direct examination you said that what was meant by that was that it had reference to this syndicate contract of December 26th?

A. Well, as I was a party to the contract with Drexel, Morgan & Co., the joint contract between myself and Mr. Porter and Drexel, Morgan & Co., of course, would not deliver those securities to Mr. Porter or to me without the consent of the other, and that is indicated in the letter.

Q. You had not really in fact made any sale of your interest in that contract to Mr. Porter, had you?

A. I assigned it to him, and took my interest in the syndicate.

Q. You had simply turned it over to the syndicate, haven't
981 you; isn't that so?

A. Mr. Porter is a part of the syndicate.

Q. Certainly, and all there was about that assignment of your interest to Mr. Porter was simply that the syndicate had agreed to buy the whole of it?

A. Yes, sir.

Q. And Mr. Porter was a member of the syndicate; isn't that so?

A. Yes; still, in explanation, I would say, of course, as I have stated before, that Drexel, Morgan & Co. would not deliver those securities to either one of us without the consent of the other.

Q. As far as Drexel, Morgan & Co. were concerned, that was true—that is to say, you consented that Mr. Porter might have the handling of this matter?

A. Yes, sir.

Q. And as between you and Mr. Porter and the syndicate, the syndicate were the owners of the bonds and stock, and are to-day?

A. Yes, sir.

Q. Do you remember whether Drexel, Morgan & Co. wrote to you to know what you were going to do about paying for these bonds and stock after the 20th of August had come and gone?

A. They notified us that they had sold the bonds and stock to us under our contract with them for the purchase. Of course, they made no claim for the money until the time had expired, as we had an option of paying on or before the 15th of January.

Q. Now, the members of the syndicate, outside of you and Mr. Porter, understood they were making a purchase from Crawford, didn't they; wasn't that talked?

982 A. They understood what the contract indicates there.

Q. Was that contract true? Was that statement in the syndicate contract true—that you were buying these bonds and stock of Henry Crawford—or false?

A. We were buying them of Henry Crawford, first having obtained title to them through Drexel, Morgan & Co.

Q. But the syndicate agreement don't say that. Now, I want to know whether you made this purchase from Henry Crawford, as the contract recites here, or whether you did not?

A. We first bought the stock and bonds from Drexel, Morgan & Co.; that you are familiar with; we then made an additional agreement with Mr. Crawford, by which he was to put in additional property not covered by the mortgage, and Mr. Crawford agreed to give a certain amount in a certain way, as indicated in the contract.

Q. This contract recites "that Crawford agrees to sell, and hereby sells, to the syndicate twelve hundred of the first-mortgage bonds of the Chicago & Great Southern Railway Company owned by him;" is that true or not—was it true on the 26th of December?

Which question was objected to by solicitor for complainant on the ground that the contracts themselves settle that question, and that it is a conclusion of law.

A. Mr. Crawford also agreed to sell additional property and other property for the amount which we agreed to pay him—seven hundred and fifty thousand dollars, including the bonds and stock which we had already bought from Drexel, Morgan & Co.

983 Q. Is that the only answer you have to make to that question?

A. I think that is a correct answer.

Q. Is that the only answer you wish to make to it?

A. I don't know that I can make any other.

Recross-examination by Mr. PIERCE:

Q. Whatever rights you had to these bonds and stock exist under the Drexel, Morgan & Co. contract of June 25th, 1884, and the contract the Colonel has just shown you of December 26th, 1884?

A. Yes.

Q. At the time Mr. Crawford gave you the second lien on these bonds, you say you surrendered some of the securities that you had?

A. Not at the time he gave us the lien, no; but when he made the assignment of his interest in the syndicate contract.

Q. Then you surrendered some other securities?

A. Then we surrendered some other securities.

Q. About what proportion did those securities bear to the amount that he owed you; you say he owed you about three hundred thousand dollars; do you remember and can you say in a general way about what the securities were worth that he had pledged at that time?

A. I can only approximate the amount. I should say a hundred and fifty thousand dollars, perhaps, because the stock of the Louisville, New Albany & Chicago has been all the way from one
984 hundred and fifteen to fifteen; it fluctuates widely.

Q. Don't you remember that at [that] time the market value was only about fifteen?

A. That is my recollection.

Q. There were four thousand shares, were there?

A. About four thousand—between four and five.

Q. That was the main security you had?

A. That was the main security; the other was of no special importance.

Q. That would be sixty thousand dollars, wouldn't it?

A. Yes, sir.

Q. I will ask you if before that time, while you were furnishing the money to Mr. Crawford in the construction of the air line, you may state what security you have to secure you in the advances you were making at that time?

A. The bonds and stock of the air line road.

Q. Of the Chicago & Indianapolis Air Line road?

A. Yes.

Q. How many of them?

A. Oh, the amount varied at different times.

Q. From time to time you released Mr. Crawford part of that security?

A. Yes; as the debts were paid.

Q. And didn't you release him outside of that, too? Don't you remember at one time of surrendering four hundred thousand dollars of security on the air line stock? Do you remember leasing it to Mr. Crawford personally, four hundred thousand dollars of the stock of the Chicago & Indianapolis Air Line or the Louisville, New Albany & Chicago?

A. The Louisville, New Albany & Chicago. There was at
985 one time, I know, a division of the stock made. Mr. Shumway, I think was interested in it, and he was a sort of trustee in the matter and under his directions and instructions, we reserving a sufficient amount as security for the balance due us, we did release, which we had been holding, a large amount; I could not say the amount now, but a large amount.

Q. In the neighborhood of four hundred thousand dollars?

A. Yes, I should presume it was; we held at one time all the stock as far as it was issued; it was delivered to us as collateral security and then released as the payments were made.

Q. Don't you know that Mr. Crawford sold that stock and put the money derived from the sale of it into the Chicago & Great Southern?

A. I know it from his statement, yes.

Q. He was doing business through your bank at that time, was he?

A. Yes, sir.

Redirect examination by Col. COOPER:

Q. You don't know it otherwise than from Crawford's statement?

A. I presume I may have had at that time knowledge which I have forgotten now.

Q. Do you now remember of having that information from anybody else?

A. Well, I should know it naturally in the tranactions with the bank, in the payment of his checks, and so forth, at that time.

986 Q. But you say that prior to the 25th of June you never, except in the matter of having seen the construction contract prior to that time, *you never* looked into the affairs of the Chicago & Great Southern Railway Company at all, in any way?

A. Any more than I might in the way of conversation or some general way.

Q. Isn't this true, Mr. Nickerson, that you had been pressing Mr. Crawford [for] payment of this indebtedness?

A. Undoubtedly.

Q. And didn't you on your return from Europe, which you say was in June, 1884, hadn't you been inquiring of him into the condition and affairs of this Chicago & Great Southern railway with reference to the interests that the bank had?

A. I cannot say that, because I had been away over seven months previous to that.

Q. Didn't Mr. Gage tell you as to what he had done?

A. Yes.

Q. That he had done——

A. That he had required that the securities which we were holding of Mr. Crawford's—they had depreciated in value and he had required additional security, which we gave him in the form of a second lien on his bonds and stock.

Q. Do you remember about the time that thing was done?

A. It was while I was away; I learned of it after I returned.

Q. You don't know when that was done; you say that was taken up by Mr. Crawford; you gave that up to Mr. Crawford—the bank did?

A. Gave what up?

Q. That order to Drexel, Morgan & Co.?

A. Yes; when this settlement was made.

987 Q. You have none of the papers relating to the Chicago & Great Southern matter?

A. No, sir.

Q. Mr. Porter is the custodian of all of them?

A. Yes, sir.

Q. This contract provides, as I read it to you, that it should supersede and be in all respects a substitute for any and all agreements in anywise inconsistent with it. As I understand from you, there has been no contract made since then between the syndicate and Mr. Crawford, or any members of the syndicate and Mr. Crawford, to your knowledge, or the bank and Mr. Crawford or Drexel, Morgan & Co., or any of them?

A. Since the 26th of December?

Q. Yes.

A. No, sir.

Mr. PIERCE: You have said you thought you had seen the construction contract of Henry Crawford before the month of June, 1884?

A. Not before the month of June; before the 25th of June; before the contract was made with Drexel, Morgan & Co.

Q. You say you think you saw it?

A. I think so; yes; it may have been after that.

Q. I wish you would think about that a little.

A. Or it may have been just previous to the contract of the 26th of December.

Q. You are not able to speak with any certainty as to when it was you saw that?

A. No, sir; I am not.

Q. Do you recollect the circumstances under which you saw it?

A. No; I do not.

Q. Or the place?

988 A. If I saw it I merely glanced over it and handed it.

Q. Now, Mr. Nickerson, your whole deal in this transaction has been done in good faith to protect the interests of the bank?

A. It certainly has.

The signature of the witness to the above deposition was waived by agreement of counsel.

HENRY MEISELBAR, being recalled, made the following statement:

On reading over my deposition as reported I find there the word "not" is left out on the tenth line from the bottom of page 183 before the words "an officer." It should read as follows: That "inasmuch as I was not an officer of the company, or I should have known it positively."

Recess to two o'clock p. m.

989 Parties reassembled at two o'clock p. m.

Present: Same as before.

LOUIS DANZIGER, a witness called on behalf the defendants, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. What is your name, residence, and occupation?

A. My name is Louis Danziger; I reside in Chicago, Illinois, and am an attorney-at-law.

Q. Did you ever have a claim of H. B. Scutt & Co., a corporation, limited, against the Chicago & Great Southern Railway Company placed in your hands?

A. I did.

Q. Do you know what that claim was for?

A. The claim, as I remember, was for barbed wire.

Q. For what purpose?

A. Barbed wire sold to the Chicago & Great Southern Railway Company.

Q. For what—what kind of barbed wire was it—for fencing?

A. I believe it was, and some staples, though I might say that at the time the claim was placed in my hands I was a clerk for George W. Smith, attorney-at-law, and it was placed in my hands for the purpose of seeing Mr. Crawford and having it collected.

Q. About what time was that?

A. It was in the month of March, 1884.

Q. Did you have a statement of the account?

990 A. I had a statement of account and the bill attached to that declaration is the same statement. On the 10th of March, 1884, I called at the office of the Chicago & Great Southern Railway Company, in Montauk Block, and I saw Mr. Crawford and stated to him that I represented Gen. Smith, who had this claim sent to him for collection, and that I came there to see about its collection. I believe I handed the bill to Mr. Crawford; anyway I had it in my hand. Mr. Crawford said the bill was all right, and he said they were not then in a condition to pay it, but they were making negotiations of some kind, perhaps with reference to a loan or sale of bonds—I do not recall now which—and if I came in in the early part of the coming week that they would be in a position to pay it.

Q. Did you see Mr. Crawford afterwards?

A. I think I called there a few days after that, but Mr. Crawford was not then ready, and on the 14th of March I brought suit.

Q. Where?

A. In the superior court of Cook county.

Q. Did you get judgment?

A. I got a judgment by default.

Q. Is this the statement of account that you had? (Handing paper to witness.)

A. That is the identical statement that I had at that time.

Solicitor for defendants offered the statement in evidence as follows:

PITTSBURGH, PA., *October* 5, 1883.

The Chicago & Great Southern Railway Co., care C. S. Worden, gen. agent, Goodland, Ind.

991 Bought of H. B. Scutt & Co., limited—

196 reels painted cactus	22,248	5	111 40
3 kegs plain staples	300	4½	13 50
	22,548		1,125 90
Less f'r't to Goodland @ 18c.			40 59
			$1,085 31

C., St. L. & P., marked "C."

Q. Did I understand you to say Mr. Crawford said the account was all right?

A. He said the account was all right.

Q. Did you know what connection Mr. Crawford had with the Chicago & Great Southern Railway Company?

A. I understood at the time I went to him that he was president of the road.

Cross-examination by Mr. GARDNER:

Q. When did you go to him?

A. On the 10th of March, 1884.

Q. Did Mr. Crawford tell you he was president of the road?

A. He did not.

Mr. PIERCE: You say when you went to see him on the 10th of March he told you they had some sort of a negotiation pending?

A. Yes, sir.

Q. A sale of bonds or something?

A. I think he said a sale of securities.

Q. A sale of securities of the road?

992 A. As I understood from him.

Q. And that if that sale was consummated you would come in in about a week and he would be in a condition to pay?

A. He told me they would probably be ready in about a week. He told me to come in in the early part of the coming week.

Q. You came in in about a week and he was not ready to pay it?

A. I think the General was getting a little anxious, and I may have gone in there a little before that.

Q. You went on and took judgment?

A. Then I went on and took judgment.

Col. COOPER: Did you take judgment for the amount of that bill?

A. Yes, sir.

Mr. PIERCE: That was for barbed wire for fencing purposes, was it?

A. That is what I understood.

Q. Entirely?

A. As stated in the bill; that is all I know.

The signature of the witness to above deposition was waived by agreement of counsel.

THEODORE S. DICK, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. What is your name and occupation?

A. My name is Theodore S. Dick; I am superintendent and salesman for Fitzsimons & Connell.

993 Q. Do you live in Chicago?

A. No, sir; I don't live in Chicago at the present time; I live at Winnetka.

Q. What was your occupation in the year 1883?

A. The same as now, sir.

Q. Did you ever have any dealings with the Chicago and Great Southern Railway Company?

A. Yes, sir.

Q. I mean your firm—the firm of Fitzsimons & Connell?

A. Yes; I understand the question to be such; yes.

Q. What were the dealings that you had with the Chicago and Great Southern?

A. We furnished them timber.

Q. What for?

A. For the purposes of the road.

Q. The construction of the road?

A. We supposed so: yes, sir.

Q. Whom did you have your dealings with on the part of the company?

A. Well, the company had orders—had blanks upon which they made out their orders—and it was sent to us in that shape.

Q. Do you know what person was acting; did you see anybody while you were furnishing material connected with the corporation?

A. I cannot say that I ever did. Mr. Connell, a member of the firm, had all of the business dealings with them.

Q. Have you got a statement of the material shipped?

A. Yes, sir.

Q. Sold and shipped to the Chicago and Great Southern?

A. Yes, sir.

994 Q. Is this the statement (exhibiting paper)?

A. Yes, sir.

Q. I notice this statement has no date at the top.

A. I believe there has been one or two previous statements made out of this account, and I supposed that the previous statements were in the hands of the lawyers.

Q. Does this statement show the entire amount of stuff shipped?

A. As I understand it, yes.

Q. Does it show the credits, the amount paid?

A. Yes, I believe it does.

Q. Is that correct?

A. Yes, sir.

Solicitor for defendants offered in evidence the statement, which is marked "Exhibit N."

Q. Was the stuff shipped at the time the items bear date?

A. Yes, sir; at those dates. This (producing book) is an order-book of Fitzsimons & Connell. There (indicating) is our first order from the Chicago and Great Southern, and these check marks in the margin here—that is the price per thousand, and that (indicating) is as it was loaded on the cars in car-load lots.

Q. When was the first shipment made?

A. The first shipment was made—that don't give the date of the first shipment, I believe. It was shipped along in the latter part of April, the first shipment.

Q. 1883?

A. Yes, sir.

Q. And the last shipment was made when—August 3, 1883?

A. Yes.

995 Q. After allowing all credits, how much was due on that account?

A. $2,186.88.

Q. At the time the account was made out, without counting interest?

A. Yes; that is the amount without interest, at the time the account was made out.

Q. That, you say, is still due?

A. Yes, sir; that is as I understand it.

Cross-examination by Mr. PIERCE:

Q. What is the total amount of the lumber furnished to the Chicago and Great Southern, as shown by that bill?

A. $4,178.17.

Q. And what amount of credits?

A. $1,991.29.

Q. Leaving a balance due of what?

A. $2,186.88.

Q. That was all furnished in the year 1883?

A. Yes, sir.

Q. Beginning at April and running to August?

A. Yes, sir.

The signature of the witness to above deposition was waived by agreement of counsel.

LYMAN J. GAGE, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. State your name, occupation, and residence.

996 A. My name is Lyman J. Gage. I am vice-president of the First National Bank of Chicago, and live in the city of Chicago.

Q. Have you brought with you a contract made between Henry

Crawford and H. H. Porter, for himself and associates, dated the 26th of December, 1884, relative to the Chicago and Great Southern Railway Company's securities?

A. I have not got the contract itself.

Q. Do you mean to say the bank has not the contract?

A. No; I have a copy, I think it is, of the contract. (Witness produces paper). It is a copy of the contract.

Q. Have you brought the assignment of that contract?

A. I have; here it is. (Witness produces paper.)

Q. This is the assignment of the Crawford contract?

A. Yes, sir; this is the assignment.

Q. Who negotiated that matter with Crawford—the assignment—you or Mr. Nickerson?

A. Well, I don't know; I guess, both of us.

Q. What was Mr. Crawford's indebtedness to the bank on the 26th day of December, 1884?

A. Nearly $300,000.

Q. This contract recites that he is indebted in the sum of about $290,000?

A. It was something more than that; it was between that and $300,000, I think.

Q. Has any part of that ever been paid?

A. I think not.

Q. You would know, wouldn't you, Mr. Gage?

A. So far as I know, nothing has been paid; that is my recollection. I know he still owes us nearly $300,000.

997 Q. Did you give back Mr. Crawford any papers, did the bank, at the time this assignment was made—I mean any agreement of any kind—or have you since?

A. No, sir; not that I know of.

Q. You had at the time this assignment was made—I mean on the 26th of December, 1884, as this assignment recites—4,700 shares Louisville, New Albany, and Chicago railway stock, 37 shares Gulf, Colorado, and Santa Fé Railroad Company stock, $26,000 bonds Wabash and Pacific railway, Chicago division, and two notes of J. N. Herrick for $11,000, secured by trust deed? Was that all the security the bank had for this indebtedness at that time?

A. At the time they were delivered, do you mean?

Q. Yes.

A. Yes, sir.

Q. The transaction, then, was you surrendered Mr. Crawford all the securities which the bank held?

A. That is as I understand it; yes.

Q. You surrendered securities which you held and took an assignment of his interest in this syndicate contract?

A. That is it.

Q. What was the market value, or I will ask you what was the value, as you would put it, of these securities at the time this assignment was made, on the 26th of December, 1884?

A. It is hard to tell what they would have sold for. That stock fluctuated from something like a hundred dollars a share down to,

I think, as low as ten dollars a share, with a merely nominal
998 market. My impression is that about the time that this exchange was made the nominal quotations of the stock were 28 or 30 cents; but that is mere recollection; it might have been half that.

Q. It might have been more than that.

A. Well, I don't think it was more than that, because my recollection is it was not more than that, and it might have been a great deal less. I would not speak with any certainty.

Q. Can you say this, what you, as a representative of the bank, considered these securities to be worth, as collateral to Mr. Crawford's indebtedness at that time, in a round sum?

A. Well, I could not without looking them over, and perhaps referring to quotations, if I could find them, of the stock. It is a good while ago, and it is pretty well out of my mind. I cannot speak with accuracy, but my present belief would be that we could not have called them worth altogether over $100,000.

Q. Mr. Nickerson, as I recollect his testimony, said that they were worth about $150,000; you would place them at about $100,000?

Mr. Pierce: He corrected that; he put that as an outside figure.

Col. Cooper: The bonds of the Wabash, $26,000, that is par value of the Wabash, Pacific & St. Louis Railway Company?

A. About par.

Q. They were worth about par?

A. Somewhere thereabouts, yes.

Q. Were the shares of the Gulf, Colorado and Santa Fé
999 Railroad Company worth anything?

A. Yes, they had a value, but I cannot say how much; they have never been quoted on the stock market, I believe, but they have been sold in three or four years at ninety cents and at a hundred cents.

Q. Were these notes of Herrick for $11,000 secured by trust deed, considered good at that time?

A. They were thought to be good.

Q. And the main question would be, then, as to what the market value of the Louisville, New Albany & Chicago Railway stock was?

A. That would cut the largest figure in estimating the value of the securities.

Q. And just about what the market value of that stock was you say you don't remember?

A. No; I connot speak with any accuracy about that.

Q. Have you any means of finding out?

A. I could look back on the stock list and ascertain, I suppose.

Q. I wish you would do that, and without troubling you to come here again, if counsel on the other side agree to it, you can state and send up a note, and it may be put in your deposition—the quotations at that time, or as near that time as you find any stock quotations.

A. All right; I will do so.

Q. Did the bank have Mr. Crawford's notes for this money at that time?

A. Yes, sir.

Q. Did the bank have any guaranty of these notes?

A. No, sir.

Q. Who negotiated the loans to Mr. Crawford on behalf of the bank?

1000 A. Well, I did, and Mr. Nickerson did, and we did jointly.

Q. Had the loan been increased any from the 25th of June, 1884, down to the 26th of December, 1884, in that interval?

A. I think not, unless by the addition of interest.

Q. There had been no new loans made to him?

A. I think not.

Q. When was the last loan made by the bank to Mr. Crawford?

A. I cannot recollect.

Q. Do you know about when?

A. No; I could not speak with any definiteness.

Q. What did Mr. Crawford say to you that he wanted this money for as you loaned it to him—for what purpose had you loaned it?

A. We understood that the original money which he borrowed was in connection with the construction of the Chicago and Indianapolis Air Line, I think, is the name of the road.

Q. Afterwards transferred to the Louisville, New Albany and Chicago?

A. Yes, sir.

Q. Didn't the bank have any other paper or any other security except from Mr. Crawford for those loans?

A. The bank did not have; no, sir.

Q. Didn't Mr. Nickerson—Samuel M. Nickerson—guarantee the bank against loss on those loans?

A. He did; the old First National Bank had precedence or had priority over this; that expired, however—that guaranty—when the old national bank went out.

Q. He had guaranteed the old loan?

A. He did.

Q. Hadn't he made it good as far as the bank was concerned? Wasn't the bank made good on this loan? 1001

A. Only by the securities you know all about.

Q. Not otherwise?

A. Not otherwise; no, sir.

Q. Before the expiration of the charter of the First National Bank you had Mr. Nickerson's guaranty—the bank did—for Mr. Crawford's indebtedness?

A. There was a credit given by Mr. Nickerson by which he held himself obligated to the bank for loans made to Mr. Crawford to a certain limit; yes.

Q. Had Mr. Crawford exceeded that limit at the time of the expiration of the charter of the First National Bank?

A. No; I think not.

Q. When did the charter expire?

A. June 1, I think it was, 1882.

Q. When the charter of the bank expired what became of that guaranty?

A. I suppose that expired too.

Q. And this account expired also, didn't it, in the same way?

A. No, sir.

Q. You treated this account as a debit of Henry Crawford transferred by the old corporation to the new?

A. The old corporation transferred to the new the note and securities of Henry Crawford.

Q. But did not transfer Mr. Nickerson's guaranty?

A. It did not.

Q. Did the bank have any guaranty from any person other than the mere assignment of this contract as a security for this money?

A. No, sir.

1002 Q. Nothing but the assignment of this contract?

A. The assignment of that contract is the only security that the bank had for the obligations of Henry Crawford, which you have been talking about; yes. That is correct; that is the only security they had.

Q. It is only the security they have ever had for it since the 26th of December, 1884?

A. It is the only security. Yes, sir.

Q. How much was the indebtedness of Crawford at the time the charter of the old bank expired; about how much?

A. I cannot remember; I could not tell without referring to the books. It might have been more at the time this assignment was made, or it might have been less; I could not undertake to say without looking at the books.

Q. Has the present bank loaned Mr. Crawford any money since June, 1884?

A. It may have done so, but I think not. If it has it has only been in moderate amounts.

Q. What do you mean by that?

A. Well, it is possible the indebtedness may have increased from five to twenty thousand; I don't believe it has more than that; it may not have increased at all.

Q. Prior to the expiration of the charter of the old bank, had you loaned Mr. Crawford any money to be put into the Chicago and Great Southern railway?

A. We had loaned him money which we understood he was to use.

Q. For the Chicago and Great Southern?

A. Oh, no, sir.

1003 Q. This money, as I understand from you, Mr. Gage, which the old bank had loaned him, was for the purpose of construction of the Chicago and Indianapolis Air Line railway?

A. Yes, sir.

Q. Do you know that to be true?

A. I know that is our general understanding; that he would use the money in that direction.

Q. You would know, would you not, whether there had been any

Q. What I want to know is, prior to the time of your coming to that conclusion what investigation you had made or had caused to be made on behalf of the bank into the affairs of the Chicago and Great Southern Railway Company with reference to the validity of this mortgage, the validity of the bonds, the integrity of the
1007 organization, and the stock—all those things which would naturally come up when you are about to take a step such as you contemplated.

A. I think we assumed that the bonds were *bona fide* bonds, and that there were good bonds. There was no reason to pursue any rigid investigation as to their origin and history. I don't think we acted on that assumption.

Q. Did you see Mr. Crawford's construction contract during that time?

A. I never did that I know of; no, sir.

Q. Did you ever see the record-book of the company?

A. I never did.

Q. Did you ever ask to see it?

A. No, sir.

Q. Did you ever ask to see Crawford's construction contract?

A. I don't think I ever did.

Q. Did you know how he came by those bonds?

A. In a general way.

Q. What was the general way?

A. In pursuance of work that he had done upon the road, as I understood it.

Q. You never made any inquiry into that matter?

A. No, sir; not very closely; only in a general way.

Q. I will ask you again what Mr. Peckham had to do with the matter?

A. I could not for the life of me tell you what he did.

1008 Q. Do you have any objection to Mr. Peckham telling himself?

A. Not the least in the world.

Q. What examination he made?

A. No.

Q. Mr. Peckham is the attorney of the bank, and was at that time?

A. Yes.

Q. Did you ever cause any examination to be made of the railroad property prior to the return of Mr. Nickerson from Europe.

A. I think not; not so far as I remember.

Q. Did you know what investigation Drexel, Morgan & Co. had made into the affairs of the railway company and its property prior to their loaning the money?

A. No, sir.

Q. You never inquired?

A. No, sir.

Q. Did you know who was president of the railway company or had you been told?

Mr. PIERCE: At what time?

Col. COOPER: Prior to Mr. Nickerson's return from Europe?

A. I understood Mr. Crawford was president of the road.

Q. Did you know who the directors were?

A. No.

Q. Did you know who was interested in the road besides Mr. Crawford?

A. No.

Q. Was it or not your understanding that nobody was?

A. I thought he had the largest interest; perhaps the almost entire interest.

Q. Did you or not understand that all the stock of the company was controlled by Mr. Crawford, owned or controlled by him?

1009 A. I supposed it was all except such as stood in the name of the directors.

Q. You say you didn't know who the directors were?

A. I don't think I could have called their names, and I don't think I can now.

Q. Did you ever hear who they were?

Objected to by solicitor for complainant.

A. I could not say whether I did or not.

Q. Prior to the 25th of June, 1884, did you know whether or not Mr. William A. Starin was a director of the company?

A. Well, I think I know that he was—that is, I think I heard that he was; I don't know whether he was or not.

Q. Did you know whether Henry Crawford, Jr., was a director of the company?

A. No, sir; my impression is that I heard that he was.

Q. Did you know D. J. Lyon was a director of the company?

A. No; my impression is I had not heard his name before.

Q. Did you know whether Mr. George W. McDonald was a director of the company—of Attica, Indiana?

A. I think not.

Q. Your understanding of the matter was that Mr. Crawford practically owned and controlled the company, was it not?

A. I believe he did.

Q. That is prior to the 25th of June, 1884?

A. Yes, sir.

Q. This assignment recites that the party of the first part, being Henry Crawford, is the owner of certain first-mortgage bonds of the Chicago & Great Southern Railway Company, amounting in

1010 the aggregate to $1,200,000, and is also the owner of certain stock of the said railway company of the par value of $1,200,000; was that true?

A. What true?

Q. That statement at the time this contract was entered into as you understood it.

Solicitor for complainant objected to the question on the ground that the contract of purchase by Porter and Nickerson of Drexel, Morgan & Co. has already been introduced in evidence showing the purchase of the bonds and mortgage from Drexel, Morgan & Co. by Nickerson and Porter, and for the reason that the other contract between Mr. Porter and Mr. Crawford, and Mr. Crawford and Mr. Porter and his associates, has been put in evidence, and it is a question of law and not a question of fact.

A. I don't suppose, strictly speaking, that was the fact.

Q. You took the assignment with that recital?

A. We did take it with that recital; yes, sir.

Q. Who drew up this agreement—who prepared it—I mean the assignment of December 26th?

A. I think Mr. Peckham did; he either did or Col. Spooner, of Wisconsin, did.

Q. What relation did Col. Spooner have to the transaction or the parties to it?

A. Col. Spooner had been attorney for Mr. Porter, and incidentally had come into our office, and understood the general thing that that paper sets forth, and my recollection is that he drew that paper.

1011 Q. Did you know on the 26th of December, 1884, who the members of this syndicate, referred to in the contract of that date, were?

A. No, sir; I could not name them.

Q. Did you know E. F. Lawrence at that time?

A. I did.

Q. Was he one of the stockholders of the First National Bank?

A. Yes, sir.

Q. Did you know Robert Law?

A. Yes, sir.

Q. Was he one of the stockholders of the First National Bank?

A. No, sir.

Q. Did you know A. J. Leith?

A. Yes, sir.

Q. Was he one of the stockholders of the First National Bank at that time?

A. No, sir.

Q. Did you know David Dows?

A. Yes, sir.

Q. Was he one of the stockholders of the First National Bank at that time?

A. No, sir.

Q. Did you know E. W. Winter?

A. No, sir.

Q. Was he one of the stockholders?

A. No, sir.

Q. How was it with Mr. Henry Seibert?

A. I did not know him at that time; I do know him now; he was not a shareholder in the bank.

Q. How was it with Mr. J. M. Durand?

A. I knew him.

Q. Was he a stockholder in the bank at that time?

A. He was not.

Q. Through what institution, if you know, were the payments made on account of the purchase of these bonds and stock by the syndicate—through what banking institution in Chicago?

A. They were not paid for through a banking institution in Chicago.

Q. Well, there were drafts drawn?

1012 A. There were drafts drawn, which I understood were used for that purpose.

Q. Was the business done in the First National Bank?

A. There was a large amount of drafts sold to Mr. Porter, which I understood he used for that purpose; further than that there was no business done about it that I know of.

Q. What is this document you have handed to me?

A. It purports to be a receipt signed by H. H. Porter, acknowledging receipt from Samuel M. Nickerson of the sum of one hundred and fifty thousand dollars in payment of his subscription for the purchase of the Chicago & Great Southern railway securities, and so forth, as per subscription paper dated Chicago, January 2, 1885.

It is agreed that the following receipt is the receipt given by Mr. Porter to Mr. Nickerson for the latter's subscription to the syndicate, for the purchase of the Chicago & Great Southern railway stock and bonds:

"Office of H. H. Porter, 38 Portland Block.

"$150,000. "CHICAGO, ILL., *January* 2, 1885.

"Received of Samuel M. Nickerson one hundred and fifty thousand dollars, being his subscription to the purchase of Chicago & Great Southern railroad securities, etc., as per subscription paper dated Chicago, January 2, 1885.

"(Signed) H. H. PORTER."

1013 Cross-examination by Mr. PIERCE:

Q. Mr. Gage, on the 25th day of June, 1884, about how much was Mr. Crawford's indebtedness to the First National Bank?

A. I think it was about $300,000.

Q. I will ask you how that indebtedness was incurred—was it by the bank loaning Mr. Crawford money?

A. That is the way it was incurred; yes, sir.

Q. So that the First National Bank had a genuine *bona fide* claim against Mr. Crawford at that time for the amount you have stated for actual money loaned?

A. It did for actual money loaned.

Q. Did you know at that time that Mr. Crawford had pledged twelve hundred thousand dollars of the Chicago & Great Southern railway bonds to Drexel, Morgan & Co., of the city of New York?

A. Yes, sir; I knew of it, and heard about it.

Q. I will ask you to state whether the bank you represent had a second lien on those bonds and stock in June, 1884?

A. We had from Mr. Crawford an order, or an assignment, which was in effect a second lien upon the securities in the hands of Drexel, Morgan & Co.

Q. For how much?

A. I think for two hundred thousand dollars; it was an order or an assignment which gave us a lien upon all the assets in there, and was not for a specific amount.

Q. But to secure his indebtedness?

A. His indebtedness, whatever it was.

Q. His indebtedness to the bank?

A. Yes, sir.

1014 Q. Do you remember what became of that assignment?

A. I think it went back to Mr. Crawford when this final assignment was executed.

Q. In the December following?

A. In December.

Q. I asked you, Mr. Gage, if you knew at the time you took either of those assignments, either the one on June 25, 1884, or the one of December following, whether you had, any knowledge or any intimation from any source or any quarter whatever of any infirmity or taint upon the securities of the Chicago & Great Southern railway?

A. We had no intimation of that kind whatever from any source.

Q. Or any intimation that there was anything illegal either in execution of the mortgage or in the issuing of the bonds or stock of that company?

A. No, sir.

Q. Do you remember Mr. Nickerson's return from Europe in June, 1884?

A. Yes, sir.

Q. I will ask you whether you had any information in the month of June, 1884, that these bonds were advertised to be sold by Drexel, Morgan & Co. under the pledge that Mr. Crawford had given them?

A. Yes, sir; I saw an advertisement to that effect in the newspaper.

Q. I will ask you if you had any information from Mr. Crawford that that was about to be done?

A. I don't remember.

Q. Do you remember his coming to you and telling you that they were going to sell these securities, and that he was powerless to protect himself?

A. I don't remember.

Q. I will ask you what steps the bank then took, if any, to protect themselves on that security? 1015

A. I wrote to Mr. Nickerson.

Q. He was then in New York?

A. He was then in New York, or so that he would get it soon after his arrival, I think, of the situation, and suggested to him to interview Drexel, Morgan & Co. with a view of securing a postponement of that sale, and, if necessary, to give them some obligation of the bank or his own, anyway to secure the postponement of it if he could, but if he could not it was to our interest to buy the securities at the sale.

Q. Did you send Mr. Blennerhasset on for the same purpose?

A. Yes, sir.

Q. For what purpose?

A. To confer with Mr. Nickerson, and aid him if it might be necessary in the negotiation.

Q. With Drexel, Morgan & Co.?

A. Yes, sir.

Q. Did he have any other business there besides that?

A. No; I don't remember that he had; I think not.

Q. You sent him there expressly for that purpose?

A. Yes, sir.

Q. What was the result of their interviews with Drexel, Morgan & Co. as reported to the bank?

A. It resulted in the postponement of the sale, I think, for some sixty days.

Q. Do you know anything about the purchase of the bonds by Mr. Nickerson and Mr. Porter from Drexel, Morgan & Co.?

A. In a general way.

Q. Do you know anything about the contract Mr. Nickerson and Mr. Porter entered into with Drexel, Morgan & Co.?

1016 A. Yes, sir; I know about that contract.

Q. Have you seen the contract (handing to witness paper marked Exhibit L)?

A. Yes; I think I saw a copy of this contract after Mr. Nickerson returned from New York.

Q. That is the original contract, is it?

A. This is the original contract, I should think.

Q. Did you know about the sale of the bonds in August following?

A. Yes, sir; I did.

Q. Tell us what information you had in regard to the sale by Drexel, Morgan & Co. to Porter and Nickerson.

Col. Cooper: Anything you know personally.

A. I only saw letters. The notice, I think, from Drexel, Morgan & Co.

Q. The notice from Drexel, Morgan & Co. to whom?

A. To Mr. Porter and Mr. Nickerson.

Q. To what effect?

Solicitor for defendants objected to the witness testifying as to what that notice was, as it appears from his testimony that it was in writing and that it can be produced.

A. It was to the effect that they declared the bonds to be the property of Nickerson & Porter, under the terms of the contract, and they would look to them for pay according to the contract.

Q. I will ask you if that purchase was made, if you know, on any understanding with Mr. Porter that the lien of the bank

1017 should be in some way protected?

A. Yes, sir; there was a *quasi* understanding with Mr. Porter that he would buy those bonds for $350,000 and the interest; he would not obligate himself to pay any more; but if, upon examination of the property, he and the persons he should associate with him would give for the property and in recognition of the bank's second lien an additional sum, that should go as far as possible to protect the bank's second lien.

Q. State whether that amount was determined or undetermined; whether it was determined or not.

A. I don't think it was determined in advance.

Q. Or at the time of the sale?

A. Or at the time of the sale; it was determined afterwards, I think.

Q. When; about the time of the execution of that December contract?

A. Somewhere about the time of this December contract; a little anterior, a little before that.

Q. I will ask you to state what you know about the execution of this contract. I mean the December contract and the assignment of Mr. Crawford's interest in that contract to the First National Bank, about their being executed about the same time.

A. They were, I suppose, executed simultaneously.

Q. They were executed at the same time, were they?

A. I so understand it.

Q. And it was upon the execution of that assignment by Mr. Crawford that the First National Bank surrendered the securities it held and had been holding previous to that time?

A. It was.

1018 Q. I will ask you if it was not part of the agreement that Mr. Crawford should execute that assignment of his interest in the contract?

A. It was.

Q. I will ask you if at that time—that is, at the time of the execution of that contract in December and the assignment of Mr. Crawford's interest in it to the First National Bank—if you had up to that time heard any claim made by any one that the bonds were illegal, fraudulent, or void?

A. I never had.

Q. Or that there was any defense of any sort to be made against them?

A. I never heard it intimated that there was.

Q. Did you ever hear there were any pretended claims against it?

A. I did not.

Q. Or any liens on the property ahead of the bonds?

A. Well, I heard that there might be liens. I have not heard of any established liens.

Q. Had you seen anybody that claimed that he had a lien ahead of the bonds?

A. No, sir.

Q. You had not?

A. No, sir.

Q. When did you say you saw the construction contract of Mr. Crawford?

A. I said I thought I never had seen it.

Q. I will ask you if you had ever heard up to the time of the execution of these contracts in December, 1884, anybody impeach the validity of that contract?

Col. **Cooper**: What contract?

Mr. **Pierce**: The Crawford construction contract.

1019 A. I Never had.

Q. Did you know anything about the circumstances of the execution of that contract or anything about it at all, how it was carried out by Mr. Crawford with the railroad company; did you know anything about that?

A. No, sir.

Q. I will ask you if at any time you either personally or requested anybody else to go through the records—that is, up to or previous to the execution of these contracts in December, 1884—go through the records of the company?

A. I think not, so far as I remember; no, sir.

Q. Did you ever see them yourself?

A. I never did.

Q. I will ask you if you remember of requesting the bank's attorney, Mr. Peckham, to send to the various counties for the purpose of ascertaining if there were any liens on the property, any recorded liens?

A. I think so; yes, sir.

Q. Do you remember that he made a report?

A. Yes, sir.

Q. Isn't that what you meant when you said a little while ago you gave instructions to Mr. Peckham, or instructions may have been given him?

A. I presume that was involved in it, but I should not have thought of it; I remember he did send around to the counties to make these inquiries.

Q. So that during all the negotiations and dealings on the part of the bank in reference to the securities and stock of the Chicago & Great Southern Railway Company you say that the presumption all the time was that everything was all right.

A. That was the presumption; yes, sir.

1020 Q. And you never heard anything to the contrary?

A. Never; no, sir.

Q. I will ask you how much of that three hundred thousand dollars, if any, Mr. Crawford has paid to the bank?

A. Not a dollar. He still owes every cent of it.

Q. I will ask you if, at the time of the surrender of that Louisville, New Albany & Chicago stock that you held as collateral in 1884, if that stock was not at that time only of nominal value and practically unsalable on the market?

A. There had been quite a long period that there had been no movement in the stock. The quotations on the stock exchange, as far as the newspapers then made them, were recorded as nominal; but I cannot remember now what the quotations were along about that period; I will have to refer; I have agreed to do that.

Q. I will ask you if you know who owned the Wabash bonds which you held as collateral?

A. Yes, sir.

Q. State who.

A. Mr. Phillip B. Shumway.

Q. Do you know how Mr. Crawford got them from Mr. Shumway?

A. I have heard both of them say Mr. Shumway loaned them to him.

Q. To Mr. Crawford?

A. Yes; put them up for him.

Q. Do you know what became of the bonds?

A. They went back to Mr. Shumway.

Q. You delivered them personally to Mr. Shumway?

A. I did.

Q. Under whose order?

A. Mr. Crawford's.

1021 Redirect examination by Col. COOPER:

Q. With whom has Mr. Pierce, who has been conducting your cross-examination, been in consultation during the time of the cross-examination?

A. Mr. Crawford sits over pretty near to him; I don't know how much they consulted together.

Q. Haven't you seen him constantly whispering—suggesting questions, apparently—to Mr. Pierce?

A. I have occasionally; yes.

Q. Hasn't that been practically the course of the cross-examination?

A. Well, I am not the judge of that.

Q. What interest do you know that Mr. Crawford has in this lawsuit; what interest has he got in it, if you know—I mean in the bonds and stock of this company?

A. I cannot see where he has got a cent.

Q. You cannot?

A. No, sir.

Q. You do not intend he shall have anything if you can help it until the bank is paid, I suppose?

A. I don't see how he can get anything then.

Q. You say that you sent Mr. Peckham to see about some liens on this road; what did you know about its debts—about the debts of the railroad company?

A. Very little or nothing.

Q. Haven't you been told prior to the 25th of June, 1884, that the road had a number of debts against it?

A. I think there was one man—I am not sure whether it was be-

fore or after that time—a certain bridge man, was up here;
1022 he came to inquire about the relations of the bank to Mr.
Crawford and his securities, and so forth; he claimed to have a debt against the road for some $20,000; I don't know that I heard of any other.

Q. You never made any inquiry about the matter, did you?

A. Except the liens on the road.

Q. As I understand from you, the transaction was practically this: Crawford owed the bank about three hundred thousand dollars, and on the 26th of December Mr. Porter and Mr. Nickerson, the friends of the bank and who had agreed to protect it, were the owners of these bonds and stock, for which they had paid something less than four hundred thousand dollars. You had a second lien upon those bonds and stock, subject to Drexel, Morgan & Co.'s claim for principal and interest, and you, instead of buying or taking an assignment of Nickerson and Porter's interest in the bonds or taking an assignment of the bonds subject to Nickerson's and Porter's claims, *you* took an assignment of a contract between Mr. Crawford and Mr. Porter and gave up these securities that you held, amounting to about a hundred thousand dollars. That is as I understand the transaction.

A. I think that is a fair statement of it.

The signature of the witness was waived to the above deposition by agreement of counsel.

Adjourned to Friday, November 13, 1885, at 2 o'clock p. m.

1023 HENRY H. PORTER, the complainant, called as a witness on
behalf of the defendants, having been first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. State your name, occupation, and residence.

A. My name is H. H. Porter; residence, Chicago. I don't know that I can state any particular occupation; at present president of the Union Steel Company.

Q. Your business has been in connection with railroads, has it not?

A. More or less of my business life.

Q. How long a period has your business life covered?

A. Some thirty-two years here.

Q. Your connection with railroads has been in what way?

A. Generally in almost all departments.

Q. In the organization of railroads?

A. To some extent, yes.

Q. The building of railroads?

A. To some extent.

Q. In connection with the bonds and stock of railroad companies—their securities?

A. To some extent.

Q. To a considerable extent, has it not, Mr. Porter?

A. To some extent; two or three companies.

Q. What companies have you been connected with in regard to the organization and construction?

A. Well, more particularly with the companies that are now combined with the Chicago, St. Paul and Omaha Company.

Q. Several companies composed that?

A. It is now composed of what were several companies.

1024 Q. What were they?

A. The West Wisconsin, North Wisconsin, Sioux City, Stillwater, & Beaver Falls—I don't remember whether there were any more or not. There may be another unimportant company.

Q. You were connected with all of them?

A. I think I was connected with all of them.

Q. From their inception?

A. No, sir; from their reorganization.

Q. And you had to do with that?

A. Yes, sir.

Q. Were you ever connected with the Chicago and West Michigan?

A. No.

Q. Never connected with that?

A. No.

Q. You had no interest in that?

A. Never.

Q. You were formerly with the Northwestern railroad here, were you not?

A. Well, I was with the old Galena & Chicago. I was a director in the Northwestern, and for a time its general manager.

Q. Have you not had in your business life almost exclusive business connection—I mean where you were personally interested in corporations?

A. I don't know that I quite understand your question.

Q. (Question read by reporter.)

A. I should not say almost exclusively, but to a large extent.

Q. Do you know Henry Crawford?

A. Yes, sir.

Q. When did you first become acquainted with him?

A. Well, I could not say; I do not remember.

1025 Q. About how many years ago?

A. Well, I don't remember when I was first acquainted with him; my recollection places the date at so indefinite a time that I could not fix the time with any degree of certainty.

Q. Prior to the first of January, 1884, had you had any business connection with Mr. Crawford?

A. My impression is that I had not.

Q. Prior to your connection with Mr. Crawford in the Chicago and Great Southern matter, did you ever have any business relations with him?

A. I think none whatever.

Q. When did you first meet Mr. Crawford in connection with the Chicago and Great Southern railroad enterprise?

A. I should think it was in the winter of 1883 and '4.

Q. Before or after the holidays?

A. I would not be certain.

Q. How did it come about?

A. From a general conversation with some of the officers of the First National Bank, in which they expressed to me that Mr. Crawford had a railroad down there in which he wanted to place some securities and get some parties that he thought would help him financially to take an interest with them in it.

Q. What officers of the First National Bank were those?

A. I should say it was in general miscellaneous discussion between myself and the president and vice-president, Mr. Nickerson and Mr. Gage.

Q. Did they present the matter of the Chicago and Great Southern railroad to you—the enterprise?

1026 A. They presented it to me particularly rather in the general line of Mr. Crawford being the debtor of the company and his having a railroad there that he had a great deal of faith in, but it required more means to go through with it, and he wanted some assistance.

Q. You were at that time connected with the bank?

A. I was director.

Q. And a stockholder?

A. Yes; a director has to be a stockholder.

Q. What did you say to those gentlemen?

A. Well, I told them I was too lazy to meddle with anything of that kind. I didn't want to be bothered with it. That was about the way the thing stood for some time.

Q. Mr. Nickerson and Mr. Gage tried to get you to interest yourself in this road?

A. Well, they discussed it considerably. I don't think they tried to use any undue influence to go against my will, but that they kind of wished somebody would that they thought could help them.

Q. And on account of your connection with railroads, and your history and career, why you took it that they had applied to you in a general way to see what could be done?

A. They did not give me any special reason for it, excepting it was in general conversation.

Q. Was that all there was of that?

A. It resulted in my agreeing to go with Mr. Crawford over the road and look at it.

Q. After your talk with Mr. Nickerson and Mr. Gage, when 1027 did you see Mr. Crawford first about the matter?

A. I really could not say.

Q. About how long after this talk—about what time was it?

A. I should say that the whole thing was in discussion for perhaps sixty days.

Q. Off and on?

A. Off and on.

Q. And within about that time, or something near that, you then saw Mr. Crawford?

A. Yes, sir.

Q. Where did you see him?

A. That I don't remember; my memory is the general fact. I will say right here that my memory on dates and notations is exceedingly poor, and I never charge myself much with them. I don't remember that.

Q. Do you remember about the substance of the conversation between you and Mr. Crawford?

A. The substance of it was that he would like to have me go and look over the road, and that I agreed to go, and that he would take a car and fix it up so we could go along comfortably.

Q. In pursuance of that arrangement did you go over the road?

A. I did.

Q. About what time was that?

A. That I cannot tell you—the month—except that I incidentally remember it was very cold.

Q. It was along, probably, some time in the spring of 1884?

A. It must have been in the winter, because it was cold—very cold. But I cannot state the time; I have forgotten.

Q. Who went along with you beside Mr. Crawford?

1028 A. My impression is I invited—that is, he asked me to invite anybody I would like to go with me, and my impression is Mr. Marshall Field went, Mr. Edson Keith, Mr. George L. Dunlap, and, I think, Mr. E. F. Lawrence. I would not say there were not others, but I don't remember.

Mr. Crawford: Byron Smith?

A. Byron Smith.

Col. Cooper: Did Mr. Starin go down with you on the trip?

A. I would not say that he did not. I have no recollection of Mr. Starin in my mind. I have no recollection of the man or his face, so I don't know who he is to-day.

Q. Those gentlemen you have named was substantially your company that you had invited?

A. They went at my invitation.

Q. Did Mr. Crawford have some gentlemen along with him whom you had not known?

A. I think he had his son, and he may have had some one else, but I don't remember.

Q. What did Mr. Crawford say to you his interest was in the road in that conversation, or in the previous conversation?

A. The general idea I got from Mr. Crawford was that the road was practically his; that he was furnishing the money and building it.

Q. That he controlled it?

A. That was the idea; that he was a large factor in it.

Q. And that, being in the control of the matter, why he wanted to dispose of the security; was that it?

1029 A. Well, he wanted to find parties that would take some securities—buy them, and so forth—and give him means so he could go on still further enlarging, and go on with his enterprise; that was, in a general way, without any special.

Q. How much of the road did you go over?

A. I think we went from Fair Oaks to Yeddo.

Q. The rails had been laid the whole length of the road?

A. We did not go over anything but rails, sure.

Q. They had been laid from Yeddo to Fair Oaks?

A. We rode over the road from Fair Oaks to Yeddo, which, I presume, was all that road; we so understood it.

Q. Did you put yourself in a position in the car as you passed over the road to observe its physical condition?

A. As far as it was practicable in such weather.

Q. What condition did you find the road in at that time?

A. Well, I don't remember. I have looked over so many roads, and so many times over. I have a general idea, however, that the rails were good, and that the ties were generally strong; and, if I am not mistaken, there was snow on the ground, but I am not sure.

Q. You could not tell much about the bank or the earthwork?

A. We could not tell very largely; just casually gain a general idea.

Q. Was it surfaced?

A. What do you call surfaced?

Q. I mean where the road is filled in between the rails, the ground heaped up, and something in the way of ballast.

A. I should say there was a good deal of it that was that way.

Q. Was there a good deal of it which was not?

1030 A. Well, I don't remember so much about it. I should say it generally had dirt thrown in between the ties, if that is what you mean.

Q. Was it in such shape that you could observe the bank—what kind of an embankment it was—whether it was the proper width and fullness, and all that?

A. Well, perhaps to a moderate extent.

Q. Can you remember, now, Mr. Porter, after you came back from there, about what your conclusions were, from your observation of the road going over it, as to its physicial condition as a railroad?

A. Well, my recollection of the thing, looking it over, is very general, that it had got to be a good deal done to it to make it ready for a vigorous working railroad with much tonnage. That is about all.

Q. Did you stop at bridges and examine the bridges, and so forth?

A. No; I think only by looking out as we rode over.

Q. Did you sit at the rear of the car and look over the road as you passed along?

A. I usually do, and I have no doubt I did a great deal of the way there.

Q. When you came back, or while you were coming back, or while you were going down, did you have any talk with these gentlemen whom you had invited about the enterprise?

A. Only in a general way.

Q. What were your conclusions as stated to them—favorable or unfavorable to the road?

A. Oh, I told them that it involved so much work and so
1031 much more money that I thought we had better not have
anything to do with it, and we did not.

Q. Then it dropped?

A. Then it dropped.

Q. When did you take the matter up again, if you did take it up, as the evidence seems to show you did?

A. Well, it must have been early in June; somewhere in that neighborhood.

Q. At whose instance did you take hold of the matter at that time?

A. The same general discussion in the bank, and a sort of feeling sorry for Crawford.

Q. One of the things that influenced you was a consideration for Mr. Crawford's financial condition?

A. Well, it was a kind of feeling towards him.

Q. That he had got the enterprise on his hands, that he needed more money to carry [it] on, and that there was sufficient money in it, in your judgment; that you would like to help him if you could?

A. I shall have to put that in a little different way.

Q. But it is in your own way?

A. That he thought he was on the eve of negotiating his securities on satisfactory terms to him to enable him to go on, but that the parties who had them as collateral, Drexel, Morgan & Co., were not willing to wait, and that if they could be assured that some one would buy the securities as the indebtedness of Drexel, Morgan & Co. they would wait. So I told him Mr. Nickerson had agreed we would do that if they would give Crawford sixty days more time to
place the securities, and if he failed we would take them off
1032 his hands at cost to him. That is the general substance.

Q. You think you commenced the second negotiation with Mr. Crawford early in June?

A. I will not be certain about the date, but I think it must have been about that —. At least they began to come to me about it.

Q. Who?

A. Mr. Gage, when I would meet him, would talk about it, and Mr. Crawford also. I was not seeking any one for it—that is, for the discussion of the question; that is what I mean.

Q. You were in the position, as I understand you, that you did not care to undertake the labor?

A. I did not care about it at all. I knew it would make me labor, and I didn't want it. They were under the impression it was not going to be so much labor as I thought it was, and they were hanging on.

Q. During the first negotiations, along in the early part of 1884 or the latter part of 1883, which culminated in your going down over the road, did you make inquiries of Mr. Crawford as to how this road stood—I mean as to its organization—how much stock he controlled?

A. No.

Q. Did you the second time?

A. I think not. It has not any impression on my mind now that I had or should be likely to, and I don't think I did.

Q. When did you first see Mr. Nickerson about the matter after his return from Europe?

A. I should say very soon after he returned; I could not give you the date.

1033 Q. He says early in June. Where did you see him, in Chicago or New York?

A. I saw him here.

Q. You saw him here in Chicago?

A. Yes, sir.

1034 Q. What did you tell Mr. Nickerson about your conclusions as to this road; as to what it was worth?

A. I am sure I don't remember.

Q. What was your own opinion about it, your own judgment?

A. My only impression is that I told him that, as he owed the bank, the bank had a second lien; I would join in taking up the Drexel-Morgan bonds, and then we would look over what the road was worth, or anything of that kind, and we would do fairly with the bank afterwards.

Q. You thought the road would be worth the amount of the claim of Drexel, Morgan & Co. for their principal and interest.

A. I thought the road would be worth the amount of Drexel, Morgan & Co.'s loan in such hands as would put more money with it, and it was possible for them to work it out in that way; not without more means.

Q. Certainly, to put it in shape?

A. Not only put it in shape, but to extend it to where there was business.

Q. Extend it to where? What was your plan?

A. My idea of it was it would have to be extended at both ends to make it good for anything.

Q. Extended south where?

A. To Brazil at least.

Q. To the coal fields of Indiana?

A. To Brazil at least.

Q. Then on north to bring coal into Chicago?

A. Not necessarily, but on the north to a connection with the
roads that went into Michigan where the lumber came from, and
where more coal was going to be wanted; there was not
1035 market enough in Chicago for it.

Q. Your idea and plan was, as I understand you then, when you and Mr. Nickerson entered into the contract of June 25, 1884, with Drexel, Morgan & Co., if you had to take the bonds and stock under that contract, you took them with the view of ultimately extending the road northward and southward.

A. No; I took them in view of doing what, when we got them, might seem the best and wisest thing to do; as a dernier resort we might have to do that, but there was no plan.

Q. To come back to my former question, did you understand that road, as it stood, was worth the amount of the indebtedness of Drexel, Morgan & Co.?

A. I would not have taken the road as it stood for the Drexel & Morgan indebtedness, if I had not been able to furnish more means, means, and make it a better road, and use that as a nucleus to do it with; if my ability had ceased with the payment to Drexel, Morgan & Co. for the bonds I would not have taken them.

Q. So that you had it in mind that was to be done; that was one of the plans, one of the motives, you had in making the June contract with Drexel, Morgan & Co., in company with Mr. Nickerson, to ultimately extend the road?

A. No, sir; I made the contract, thinking that the chances, as Mr. Crawford put it, and as things happened to look, were that he would be able to redeem the bonds, and I have nothing to do with it, but if he did not, and worst came to worst, I could do this other thing.

1036 Q. That is to say, if you ultimately had to take the bonds under that contract with Drexel, Morgan & Co., then you could utilize in the way that I have intimated in my question as a nucleus for the extension of it south to Brazil and north to connect with other roads running up into Michigan?

A. Could after a reorganization.

Q. Did you go down to New York in June, 1884?

A. No, sir; the contract was made here, by correspondence.

Q. Did Mr. Crawford see the contract before it was signed or when it was signed?

A. I could not tell you whether he did or not; I have no recollection of his having done so.

Q. Was it not a contract made with the consent and concurrence and according to the wishes of Mr. Crawford?

A. My impression is, that the letter of option, if you call that the contract, the letter agreeing to pay for them at that time, was with his consent and at his solicitation—that is, the agreement to give him 60 days, and if he did not, to do the other thing. The contract with Drexel, Morgan & Co.—I have no recollection of Mr. Crawford being consulted about it in any way or shape.

Q. The consultations with Crawford which led up to the contract with Drexel, Morgan & Co., were they not of a character entirely friendly on the part of Mr. Crawford; Mr. Crawford entirely concurred in that contract?

A. I looked upon it not as a thing Mr. Crawford wanted, but under the circumstances he had got to do that or go by the board then; and he wanted a little longer time to try to get out, that is all.

1037 Q. Didn't you look upon it, as far as Mr. Crawford's talk with you was concerned, as a thing Crawford desired you and Mr. Nickerson to do?

A. This option?

Q. Making this contract with Drexel, Morgan & Co.

A. What do you call the contract?

Q. I mean the contract of June 25, which has been introduced in evidence and which you signed, sir.

A. Is that the contract by which Mr. Crawford has sixty days, or his contract made after his sixty days expired?

Mr. PIERCE: It is the contract extending the time sixty days.

Col. COOPER: It is the contract of June 25, 1884.

A. Then I should say yes.

Q. That contract, I understand, of June 25, is the first contract you ever entered into in writing or verbally with reference to the Chicago & Great Southern railway security?

A. Yes, sir.

Q. Now, that contract you and Mr. Nickerson entered into with Drexel, Morgan & Co. with the full approbation of Mr. Crawford?

A. I so understood it.

Q. You so understood it from Mr. Crawford himself, did you not?

A. I will not say I understood it from Mr. Crawford or Mr. Nickerson. I so understood it—that was the idea in my mind—but I cannot tell from whom.

Q. And, as I understand from you, the object and purpose you had was, among other things, next to save Mr. Crawford's securities from being slaughtered, to use a term, under a sale by Drexel, 1038 Morgan & Co., and at the same time save the First National Bank as to its second lien upon the securities?

A. Yes, sir.

Q. Now, did you ever see Drexel, Morgan & Co. prior to the 26th of December, 1884, any members of that firm, with reference to this matter, personally?

A. Never.

Q. How was your communication with those gentlemen?

A. It was by mail.

Q. It was by correspondence?

A. Yes.

Q. Have you brought the correspondence with you?

A. So far as I can find it.

Q. Will you please produce it?

A. All the letters of Drexel, Morgan & Co., do you want?

Q. I want the entire correspondence with reference to the securities of the Chicago & Great Southern between you and Drexel, Morgan & Co., and also between Mr. Nickerson and Drexel, Morgan & Co., as Mr. Nickerson has testified he turned that correspondence over to you.

A. I want to say that all I can find is here; the papers were put together in separate envelopes, and here are some letters from Drexel, Morgan & Co. to us, or some to Mr. Nickerson, and some to me; the letter or proposition from Drexel, Morgan & Co. I cannot find any copy of.

Q. These letters you sent to Drexel, Morgan & Co. you have copies of?

A. I understand those have all been put in so far as I have written any; I don't remember that I have ever written but two; the letter introduced is the only one I have any recollection of writing, 1039 except some I wrote in connection with Mr. Nickerson, and which I cannot find.

Q. Will you please produce the letters of Drexel, Morgan & Co. to you or to Mr. Nickerson?

A. Those to me or those to myself and Mr. Nickerson?

Q. All the correspondence between yourself and Mr. Nickerson or either of you, and Drexel, Morgan & Co.

A. I find one letter to Drexel, Morgan & Co., or an impression of a letter, that was sent by both of us.

Solicitor for defendant offered in evidence the following letters, viz: Letter dated New York, August 13, 1884, Drexel, Morgan & Co. to S. M. Nickerson and H. H. Porter. Copy of letter August 22, 1884, to Drexel, Morgan & Co., New York, signed by Samuel M. Nickerson and H. H. Porter. Letter of August 19, 1884, from Drexel, Morgan & Co. to Samuel M. Nickerson. Letter dated New York, August 27, 1884, from Drexel, Morgan & Co. to Samuel M. Nickerson and H. H. Porter. Letter dated New York, October 24th, 1884, to Samuel M. Nickerson *to* Drexel, Morgan & Co.; which letters are as follows:

1040 "NEW YORK, *August* 13*th*, 1884.

"S. M. Nickerson, Esq., and H. H. Porter, Esq., care First Nat. Bank, Chicago, Ill's.

"DEAR SIRS: Referring to your agreement with us, dated June, 25th, '84, we beg to inform you that we have surrendered to the Chicago & Great Southern R'y Co. the shares of the Chicago & Block Coal R. R. and of the Indiana & Chicago R'y which we previously held, and that Mr. Henry Crawford has caused to be delivered to us 12,000 shares of the capital stock of the Chicago & Great Southern R'y Co. Mr. Crawford has also effected the delivery to us of $200,000 bonds of the same company (duly certified by the trustee), in addition to the $1,000,000 of said bonds which we already held.

"These securities constitute those specified as requisite for the agreement with you to become operative, and, as they are now in our possession, said agreement accordingly does become operative, which please note and confirm.

"We remain yours very truly,

"(Signed) DREXEL, MORGAN & CO."

1041 "22ND AUGUST, —4.

"Mess. Drexel, Morgan & Co., New York:

"We have your favor of the 19th and note contents of same. If we are correct, now that sixty days from June 20th have passed, you have sold us all your rights under your loan to Mr. Henry Crawford and we have agreed to pay you on or before 15th January, 1885, the amount of Mr. Crawford's debt to you. We beg to call your attention to Mr. Crawford's agreement with you of 25th June, 1884, for the amount of additional bonds he promised to place with you, as we understood it. If, however, we hold your right to prevent the issuance of the $800,000 bonds, and they cannot be legally issued, it will be entirely satisfactory to us.

"Yours truly,

SAMUEL M. NICKERSON.
"H. H. PORTER.

"NEW YORK, *August* 19, 1884.

"Samuel M. Nickerson, Esq., care First National Bank, Chicago, Ill.

"DEAR SIR: We are in receipt of your favor of 15th inst., and in reply would say that $200,000 of bonds and $1,200,000 of
1042 stock were the amounts of the bonds and stock which, under the resolutions, we were authorized to receive.

The balance of the bonds have not yet been signed by Mr. New, and cannot be, except with our consent. As we understand the matter, upon your purchasing the securities we can transfer to you whatever rights we have; but perhaps it would be as well for you to apply to Mr. Crawford for any explanation you wish beyond what we have given you.

"Yours very truly,

DREXEL, MORGAN & CO."

1043 "NEW YORK, *Aug.* 27, 1884.

"Messrs. Sam'l M. Nickerson and H. H. Porter, c. | o. First Nat'l Bank, Chicago, Ill.

"DEAR SIRS: We are in receipt of your favor of the 22d inst., which is duly noted.

"We understand the arrangement as you do, viz., that, sixty days from June 20th having passed, we have sold you all our rights under our loan to and agreement in reference thereto with Mr. Henry Crawford, for which you are to pay us on or before Jan'y 15th, 1885, the amount of Mr. Crawford's debt to us, with interest and expenses.

"Mr. Crawford has given us, as already advised to you, 200 more of the Chicago & Great Southern R. R. bonds, making, together with the $1,000,000 of said bonds which we had before, a total of $1,200,000. We have also received, as we have already informed you, $1,200,000 of the stock of the same company.

"The remainder of the bonds are in the hands of Union Nat'l Bank of Chicago, unsigned by the trustee, and therefore not issued, but they are subject to our call and control, and cannot be issued except with our consent.

"By Mr. Crawford's agreement with us they are, when issued, to be given to us as security for his debt.
1044 As we understand from your letter, this position of affairs is entirely satisfactory to you.

"We are yours very truly,

"DREXEL, MORGAN & CO."

"NEW YORK, *October* 24, 1884.

"Sam'l M. Nickerson, Esq., First Nat. Bank, Chicago, Ill.

"DEAR SIR: As requested in your favor of the 22d inst., we hand you herewith a statement showing the amount due us Nov'r 1st next on account of the Henry Crawford notes, viz, $387,519.26.

"We are yours truly,

"DREXEL, MORGAN & CO."

1045 Q. Haven't you got a copy of the letter that is referred to in the one of October 24, 1884, from Drexel, Morgan & Co. to you and Mr. Nickerson, of the 22nd of October?

A. I don't find any other letters; the probability is that was a letter written by Mr. Nickerson and signed by me in the bank there, and no copy kept of it here; I suppose they kept one there.

Q. The copy that is introduced here, under date of August 22, 1884, is the same one referred to in the letter of Drexel, Morgan & Co., of August 27, 1884, is it not?

A. I should judge so; it was all in the line of the contract between Drexel, Morgan & Co., and so I paid no more attention than the paper states in getting all the securities of Drexel, Morgan & Co. which we agreed in that contract to get; it was not a purchase if we did not get them; the particular language I did not notice; it was all in that line; I remember there was a contract in which we agreed to buy these, and they agreed to sell them to us, but they do not agree to deliver them unless some intermediate details were finished in the meantime, and that was in the steps towards finishing them.

Q. Did or did not Mr. Crawford contemporaneously with the execution of your agreement of June 25 with Drexel, Morgan & Co., already in evidence, make an agreement with Drexel, Morgan & Co. to put in the additional securities?

A. I did not understand there were any additional securities to be put in consequence of our purchase—that is, if I understand the question rightly.

1046 Q. This contract of June 25 recites that "Whereas, Drexel, Morgan & Co. hold certain securities as collateral to the indebtedness of Henry Crawford, and the said Henry Crawford has agreed to cause or procure to be issued all the shares of the capital stock of the Chicago & Great Southern Railway Company that can be lawfully issued to him at the par value thereof, to at least one million two hundred thousand dollars, and all the bonds that can now be lawfully issued under the first mortgage of the said Chicago & Great Southern Railway Company," etc., and to do certain things. Now, what I ask you is, whether or not, contemporaneously with your agreement with Drexel, Morgan & Co., and when I say "your" hereafter I mean your agreement and Mr. Nickerson's, Mr. Crawford did not agree to comply with the provisions of your contract?

A. I did not understand it so; I understood that those were agreements that Mr. Crawford made that he would do when he made his loan, and that he was finishing those.

Q. Did you see the agreement Mr. Crawford had with Drexel, Morgan & Co. before you entered into the agreement of June 25, 1884?

A. I don't think I did.

Q. Did you have a copy of it?

A. I think not.

Q. Did you ask for it?

A. I think not.

Q. The terms, then, of the loan which Drexel, Morgan & Co. had made to Crawford you did not understand anything about, so far as the contracts themselves were concerned, if in writing, when
1047 you agreed to take up these securities?

A. I understood in round numbers he had one million two hundred thousand dollars of bonds and one million two hundred thousand dollars of stock there.

Q. You understood that at the time this contract was made?

A. Yes, sir.

Q. From whom?

A. I could not tell you.

Q. Did you have any correspondence with Drexel, Morgan & Co. prior to the 25th of June, 1884?

A. Not a word—not personally.

Q. Did you through anybody else?

A. I could not tell who I understood it from, but I must have had it through either Mr. Nickerson or Mr. Gage or somebody I had confidence in who stated it to me; somebody whose statement I know I should take for it.

Q. In this letter of the 22nd of August, 1884, of which you have produced a copy here in evidence, to Drexel, Morgan & Co., signed by yourself and Samuel M. Nickerson, is this statement: "We have your favor of the 19th and note the contents of the same. If we are correct, now that sixty days from the 20th of June have passed, you have sold us all your rights under your loan to Mr. Henry Crawford, and we have agreed to pay you on or before the 15th of January, 1885, the amount of Mr. Crawford's debt to you. We beg to call your attention to Mr. Crawford's agreement with you of the 25th of June, 1884, for the amount of additional bonds he promised to place with you, as we understood it." Does that refresh your recollection as to whether there was any agreement between
1048 Drexel, Morgan & Co. and Crawford?

A. I still adhere to the position that that was the agreement made with Drexel, Morgan & Co. at the time he borrowed the money; that is my understanding.

Q. Whose handwriting is this (referring to letter dated August 22)?

A. That I cannot tell you; that letter does not express the thing correctly, as I understood it; it is some clerk or somebody writing for Mr. Nickerson who was unfamiliar with the circumstances, and I hastily signed it with Mr. Nickerson without thinking of it as anything more than an acknowledgement that we bought the bonds; I should not be willing to admit it as meaning any more.

Q. Mr. Nickerson has sworn here that you had the management of this mainly—he left that to you. Now, then, I would like to have you refresh your recollection, if you have any, with reference to this statement in this letter where you call Drexel, Morgan & Co.'s attention "to Mr. Crawford's agreement with you of the 25th of June, 1884, for the amount of additional bonds he promised to place with you, as we understood it."

A. That is it, just as I understood it, which I stated right there; that I understood at the time of the loan that Mr. Crawford agreed to give to Drexel, Morgan & Co. some additional securities, and that those additional securities he was to give to Drexel, Morgan & Co. whether we bought the bonds or whether he redeemed them or whether he sold them at auction, and it had no relation to us.

1049 Q. Were you in conference with Mr. Crawford about the time that this contract was entered into with Drexel, Morgan & Co.?

A. I had very little conversation with Mr. Crawford. I cannot tell you how much or where; it was generally with Mr. Nickerson.

Q. But, as I understand from your testimony already given, this was done with the concurrence of Mr. Crawford?

A. It was my understanding that it was done with the concurrence of Mr. Crawford—that is, I understood it from the business of the office; I don't know how.

Q. Have you had your letter-books in your office searched for correspondence of Drexel, Morgan & Co. in reference to this matter?

A. I asked Mr. Hillard to look the book through, and he gave me those letters, and the copies I gave Mr. Pierce, which I don't know whether are in here or not, are all the letters we have had.

Col. Cooper: I will state for the information of Mr. Hillard, who is in the room, that there has only been one letter, a copy of one letter, introduced in evidence yet, or produced before the commissioner, and that is the letter of January 12, 1885, and the one that has been introduced since your examination here.

The Witness: That letter (referring to letter of August 22nd) did not come out of my letter-book.

Q. Whose letter-book did that come from?

1050 A. That came from some letter-book in the bank. I recognize that as not written in my office. It was something given to me to sign hastily when I was in the bank. It is not a work of mine; not a dictation of mine.

Q. When was this copy of the letter obtained, and where?

A. In hunting over the files of papers since you came and asked for information.

Q. You found it in your office?

A. I found it in my office, but the letter-book upon which the impression was taken was not in my office.

Q. Your letter-books do not contain any copies of letters to Drexel, Morgan & Co.?

Mr. Hillard: Not prior to that date, January 12, 1885.

Col. Cooper: What was the first intimation you had that Drexel, Morgan & Co. elected to consider you and Mr. Nickerson purchasers of the bonds, and to hold you for the amount of Mr. Crawford's indebtedness?

A. I don't remember; probably some communication from them.

Q. Look at the letter of August 27, and see whether that was the first.

A. Well, I could not say whether it was or not. We probably had been told of it before. A man generally knows a piece of paper goes to protest before he gets the formal notice from the bank.

Q. Will you search and try and find a copy of this letter of the 22nd of October from you and Mr. Nickerson to Drexel, Morgan & Co., and also of the 15th of August?

A. I have searched every place that I can suggest. If you will
suggest some place you would like to have me look I will be
1051 glad to do it.

Q. I will suggest a way how this thing can be done very readily: If you will write a letter to Drexel, Morgan & Co. they will undoubtedly send copies of these letters to you.

A. I will ask Mr. Hillard or Mr. Pierce to have that done.

Q. I want the letter of October 22, 1884, from Samuel M. Nickerson to Drexel, Morgan & Co. There is also a letter from the same to the same of the 15th of August, 1884. Between the 25th of June and the 25th of August did you see Mr. Crawford with reference to paying this indebtedness himself?

A. I don't remember.

Q. Do you remember any effort you made to spur him up to pay his debt and relieve you and Mr. Nickerson from the obligation of your contract of June 25?

A. I don't remember whether I did or not.

Q. Can you remember about your feelings at that time, as to whether you were desirous that Crawford should?

A. I remember that I frequently reiterated that he should, and I felt and I hoped that he would.

Q. Did you tell him that?

A. I can't remember whether I told him that or not. I certainly had a dislike to going into it at all.

Q. On the 20th of August Crawford's time was up to pay the indebtedness under the contract between you and Drexel, Morgan & Co.?

A. Yes.

Q. This letter of Drexel, Morgan & Co. is written on the
1052 22nd of August, giving you information, which apparently
carries the idea that that is the first intimation that they give
you?

A. I think you are wrong, Mr. Cooper.

Q. That is the first, so far as this correspondence goes; that is the first information——

A. Isn't the contract dated the 25th of June?

Q. The contract is the 25th of June; but it is 60 days from the 20th of June. You state to Drexel, Morgan & Co., in a letter of which a copy has been introduced on the 22nd of August, 1884, "that sixty days from June 20 having passed, you have sold us all your rights under your loan to Mr. Henry Crawford, and we have agreed to pay you on or before the 15th of January, 1885, the amount of Crawford's debt to you," etc. So that the probability is, is it not, from your recollection, that you did not get any intimation from Drexel, Morgan & Co. until the letter of August 22?

A. I have no recollection about it. If some one in whom I had confidence should tell me I did I should believe them; if they told me I did not I should believe them—somebody that kept my accounts; but I have no recollection on the subject myself.

Q. You have no recollection?

A. No, sir.

Q. After the 20th of August had come and gone you and Mr. Nickerson were purchasers of the bonds under contract; you were obligated to pay Mr. Crawford's indebtedness; then what did you do with reference to these securities and the loan?

A. Sat still and waited.

1053 Q. Waited for what?

A. There was nothing to act on particularly then, unless I paid the money. I did not pay the money on the 15th of January, 1885. I waited for a change of times and circumstances to see what should turn up in the meantime.

Q. What was the rate of interest that loan was bearing?

A. I don't remember.

Q. Don't you remember the rate of interest that Mr. Crawford was paying Drexel, Morgan & Co.?

A. I do not; I have no doubt the accounts there will show it, but it is not in my mind. I presume that paper shows it, but I have no recollection.

Q. Can you state now, after looking at the letter of January 12, 1885, from yourself and Mr. Nickerson to Drexel, Morgan & Co., how much the rate of interest was?

A. Six per cent.

Q. Did you have any consultation with Mr. Crawford and Mr. Nickerson about this matter after Mr. Crawford had been unable or had not taken up the indebtedness?

A. I have no recollection of any.

Q. How soon do you recollect you began to do anything with these securities that were still held by Drexel, Morgan & Co.?

A. By reference to papers, I judge it must have been about the middle of December, but my present recollection is only governed by that.

Q. What did you begin to do then?

A. To adjust the relations of the First National Bank indebtedness to the purchaser—that is, the indebtedness due to the

1054 First National Bank from Mr. Crawford to the purchaser.

Q. When you had got that done, what did you do?

A. Put your question a little more explicitly; then I will understand it, perhaps.

Q. What did you do with reference to the matter of forming a syndicate to take hold of this matter of the Chicago and Great Southern securities then in the hands of Drexel, Morgan & Co.?

A. I don't think I did anything more than have [a] conversation with the people I might want to make up the party till after January.

Q. Did you have any talk with Mr. Nickerson before January?

A. Yes; I presume so.

Q. Hadn't you got it definitely arranged with Mr. Nickerson by January?

A. I think not.

Q. Had you prior to the 26th of December, 1884, gotten assurances from any of the gentlemen?

A. Nothing binding.

Q. I don't talk about binding, but had you explained the situation of this matter to friends of yours?

A. I had probably explained it to some few.

Q. Who?

A. Well, I should say I had talked it with Mr. Nickerson, and I should not want to be sure I had talked to anybody else. I am not positive on that point.

Q. Did you see David Dows about the matter?

A. No.

Q. Did you correspond with David Dows about the matter?

A. Yes, sir.

Q. How early did your correspondence with him begin?

1055 A. I could not tell you.

Q. About when?

A. I don't remember; I should guess it as some time in January, 1885.

Q. In January?

A. I should guess so.

Q. Did you have any correspondence with Henry Seibert?

A. Yes; I think so.

Q. How early was that?

A. I should guess that was in January—January, 1885, I mean.

Q. Just state who the gentlemen were who ultimately became members of the syndicate.

A. Haven't you a paper there that will refresh my memory?

Q. No. Have you got a copy of the subscription paper that the syndicate signed or the original?

A. I think I can give the names. I have got copies of the originals both myself, but I think I can give the names now. I thought you had a copy of the syndicate paper.

Q. No, sir; that is what I would like to have. You have not got that with you?

A. Yes; here is the original.

(Witness produces paper.)

Q. Is this document the agreement between the members of the syndicate for subscription?

A. Yes, sir.

Solicitor for defendants offered in evidence the paper marked "Exhibit N."

Q. Is or not this the original agreement between the members of
the syndicate about which I have been inquiring, which is
1056 signed by the members of the syndicate, attached to the original
contract between yourself for the syndicate and Mr.
Crawford, of the 26th of December, 1884?

A. Yes, sir.

Q. The endorsement at the end of this contract of December 26th, 1884, being a receipt of Mr. Crawford, dated January 15, 1885, is in whose handwriting, Mr. Porter?

A. In Mr. Crawford's handwriting.

Q. There is a memorandum made opposite the signature of the several gentlemen composing the syndicate, at the conclusion of the agreement, dated January 2, 1885, as to when the amount was paid, and whether receipt [was] given; is that correct?

A. Yes. I will say that the syndicate was not made up when I signed the contract with Crawford, and that I furnished the means and did the necessary things until the subscriptions of these gentlemen were made and paid.

Q. I see that the syndicate contract recites—I mean the contract with Crawford of December 26th—that the sum of $500,000 has been raised by subscription by the members of the syndicate, and so forth; was that true?

A. In one sense yes and in another sense no.

Q. In what sense was it true?

A. From the fact that I had obligated myself to be the sole man of the syndicate, and would take it if I did not find any associates.

Q. And at that time you say you had not found any associates?

A. At that time I had not an associate bound to take any.

Q. Didn't you have Mr. Nickerson at that time?

A. No, sir; I did not have anybody bound. I had conver-
1057 sation with them in which they said they would join, but no
consideration and no legal binding. I simply took the responsibility
myself. I made myself legally holden without having
an associate that was bound.

Q. I don't ask about being legally bound; in your dealing with Mr. Nickerson, if Mr. Nickerson should tell you that he would put in $150,000, Mr. Porter, into the matter, you would consider that the same as done; you would count upon it, wouldn't you?

A. Life is too uncertain to say that; I should say he meant to do it, but something might happen that would prevent him.

Q. In making your calculations in reference to taking hold of this enterprise, if you had gotten from Mr. Nickerson his assurance that he would subscribe and pay $150,000 towards this enterprise or venture, would you or not count upon it as a business matter?

A. I should count upon it as a business matter, as far as a verbal promise would count from any man living.

Q. It would be the same with Mr. Cable, wouldn't it?

A. The same of every person who signed that paper, sir. Some of them did not know of it at the time.

Q. Did you get up a prospectus of this enterprise?

A. No, sir.

Q. Printed or written?

A. That is all the prospectus there is.

1058 Q. Did you see them personally and talk with them, except such as you corresponded with?

A. Yes, sir.

Q. Which of the gentlemen who composed the syndicate did you correspond with by letter?

A. I don't remember.

Q. How was it with Mr. R. R. Cable?

A. I don't remember; I should say it was personal.

Q. How about Mr. John M. Durand?

A. I think that that was personal.

Q. Alexander J. Leith?

A. That I don't remember.

Q. Robert Law?

A. I should say it was personal from his location here.

Q. David Dows you corresponded with, as I understand you?

A. I don't remember any correspondence, but it is probable I did.

Q. If you did correspond with him, have you got copies of the letters?

A. That I cannot tell you; I haven't looked for any such.

1059 Q. In the course of your business transactions, your ordinary business, I want to ask you what your judgment is?

A. I have had a great deal of correspondence with Mr. Dows; my impression is that I did.

Q. I want to state I would like to have the correspondence with Mr. Dows in reference to this matter.

A. I shall decline to give the correspondence with Mr. Dows or my private affairs, unless the court instructs me.

Q. I don't ask you anything outside of this matter.

A. That is my answer.

Q. I shall ask you to produce here to-morrow morning the correspondence that you have had with Mr. Dows with reference to his joining this syndicate, as a matter material to this inquiry.

A. I shall decline to give my personal correspondence with my friends and associates on any matter, unless instructed by the court. I would like to have that referred to the court, so there can be no delay. Whether you can come in and call for all my individual friends, correspondence is a thing I want the court to say, and then I will do it with a great deal of pleasure, if I am instructed to do so.

Q. Mind, I limit the inquiry to such letters as you have written to or received from these members of the syndicate relative to their entering into this transaction.

A. I have no recollection of the letters, and whether I have letters that include that alone or other matters in it is entirely out of my memory; but I adhere to my position in reference to producing my private letters before this commissioner, and I want it referred to Judge Gresham. 1060

Col. **Cooper**: I give notice now that I shall apply to his honor Judge Gresham, in chambers, at ten o'clock.

Mr. Pierce: You do not need to give us any notice; we will go with you the very earliest minute you say, without any notice.

A. I will say it is a question of principle on which I stand, and not an invidious movement towards anybody or anything. It is purely a business question.

Q. According to your recollection, you have not any application from anybody; but, as I understand your testimony, you did have Mr. Nickerson's assurance at the time you entered into this contract of December 26th—his verbal assurance, I mean—that he would go in with you into this deal?

A. I had an impression that that was the understanding, but I haven't any recollection of any verbal conversation that would justify it; it is the atmosphere of the proceedings that controls me.

Q. Wasn't this the situation of the matter, that Mr. Nickerson was originally one of the parties that got you to take hold of this matter?

A. Yes, sir.

Q. As I understood you, his interest was the bank's interest, and he asked you to go into the matter, and when you were about to make the arrangement with Crawford he was a party to that?

A. I am under the impression, the clear impression, that I had an understanding with him that he was going to be one of 1061 the parties, but I cannot define it in so many affairs. I did not carry this in my mind. It is a weakness of mine that I do not carry those details as a great many people do; they go in and out, and how I get it or where I don't know, but that was the impression on my mind.

Q. How much in all has been paid by the syndicate?

A. By the subscription?

Q. Prior to the time that the contract of December 26th was made, Mr. Porter, what did you, as a business man and a railroad man, who had in contemplation getting your friends into this matter, what investigation did you make into the affairs of the Chicago & Great Southern Railway Company?

A. The simple general one of looking over what I thought the property as a whole was worth.

Q. What investigation did you make into the legal status or cause anybody to make for you, of the bonds and stock?

A. None.

Q. Had you seen Mr. Crawford's construction contract before that?

A. I think I had never seen Mr. Crawford's construction contract, to read any of it; even now I have not.

Q. Do you mean to say, and have it appear here in your evidence, as the truth, that you were going into a deal of seven hundred and fifty thousand dollars and never caused any examination to be made as to the title to the property?

A. I do.

Q. You do?

A. Yes, sir.

Q. You have had a good deal of experience in matters of this kind before?

A. Yes.

Q. You had had big litigation up in Wisconsin, hadn't

1062 you, over the claims of creditors, and so forth?

A. Yes, sir.

Q. Against railroad property?

A. Yes, sir.

Q. Did you ever inquire how Crawford came by these bonds?

A. No, sir.

Q. Did you ever inquire how he came by the stock?

A. No, sir.

Q. Did you know he was president of the company?

A. No, sir.

Q. Did you know who its stockholders were?

A. I think not.

Q. You think you did not?

A. No; I didn't know who the directors were.

Q. Did you know to whom the stock had been issued?

A. No; I may have had an atmospheric knowledge, but I have no knowledge from discussion.

Q. You did not know whether Mr. Crawford had any construction contract with the company or not?

A. I will not say I have heard he had a construction contract or not; I don't know; none that I made any investigation into or looked to at all.

Q. Did you know whether this was all the stock of the corporation or not?

A. Only as far as the statements there go; only as far as his statements went.

Q. As whose statements went?

A. When I made this agreement, you are speaking of, are you not?

Q. As far as his statements go; you say you knew only so far as his statements go; whose statements do you mean?

A. Well, I should say as much as anything Mr. Nickerson's in the discussion of the securities.

Q. Mr. Nickerson says he left this matter to you?

A. I cannot help what Mr. Nickerson says.

1063 Q. That he did not know anything about the details and he left it to you; was that true?

A. I should say it was.

Q. And you did not attend to them?

A. If that is as you judge it, I did not.

Q. Had you any statement of how much stock of the company—capital stock—had been issued?

A. Only on the general say so that there was that amount in Drexel and Morgan's hands.

Q. How much?

A. One million two hundred thousand dollars.

Q. $1,200,000, par value?

A. Yes, sir.

Q. Did you know whether that was a majority of the stock or not?

A. Only as I was generally informed that that was all the stock.

Q. Who generally informed you; what was your general information?

A. My general information was my general conversations so far as they had gone with Mr. Nickerson and Mr. Gage and Mr. Crawford.

Q. What did Mr. Gage and Mr. Nickerson tell you?

A. They believed that was all there was of it; that was the general conversation; there was no doubt expressed by anybody.

Q. There was no doubt expressed by anybody?

A. No.

Q. Didn't you inquire how it was that Crawford came to have these bonds—the twelve hundred thousand dollars of bonds of his company?

A. No, sir.

Q. Nor how he came to have $1,200,000, par value, of the stock of the company?

A. No, sir.

Q. Who drew up this contract of December 26th, 1884?

A. I think that was largely the work of Col. Spooner.

Q. Where does Col. Spooner live?

A. At Hudson, Wisconsin.

1064 Q. Was he acquainted with Mr. Crawford?

A. I don't know.

Q. At whose instance did Col. Spooner largely do the work of drawing up this contract?

A. At my request.

Q. Who gave him the information contained in the contract?

A. I think that, perhaps, Mr. Crawford had done some blocking out of the details before, and he had taken it for the final contract.

Q. What did you say about it; did you give him any suggestions about the matter?

A. I cannot tell whether I did or not.

Q. Did you give any directions to Col. Spooner about it?

A. In what respect?

Q. As to what you wanted done in this matter—what your contract was with Crawford?

A. I undoubtedly gave him my plan of the contract; yes.

Q. Did you read over this contract very carefully before you signed it?

A. Yes; I presume I read it over very carefully.

Q. You did not make a seven-hundred-and-fifty-thousand-dollar contract very often, did you, or do you?

A. I have made a great many in my life.

Q. I will put it the other way; you are not in the habit of buying a railroad every day?

A. Not every day; not very often.

Q. You regarded this contract as an important one, did you not, Mr. Porter?

A. Yes, sir.

Q. I will ask you the square question whether you did not very carefully consider the provisions of this contract before you ever signed it?

A. In what respect?

Q. I mean exactly what I say in the question.

1065 A. I don't think I did so carefully as I should have done in some respects.

Q. Probably in the light of events you may not have done so, but I mean at that time; didn't you give it what you considered very careful consideration?

A. I gave it no consideration on any of the questions that have come up since in the light of events.

Q. In what respect did you consider it carefully then?

A. I considered it in respect of getting the railroad on the terms that were there expressed as to dollars and cents; the railroad and coal stock also.

Q. You knew there were debts against the corporation?

A. Only in a general hearsay way.

Q. What do you mean by hearsay way; didn't you morally know as men know things that are not testified to in courts of justice—that they do not personally see—that there were debts against this corporation on the 26th of December, 1884?

A. Yes, sir.

Q. Did you know about what the amount of those debts was?

A. No, sir.

Q. Did you know in a general way?

A. No, sir.

Q. Why did you reserve a hundred thousand dollars, or something over a hundred thousand dollars, to take care of those things?

A. The amount was measured by the fact that I reserved everything except what I paid to Drexel, Morgan & Co.; that was what I reserved.

Q. Why did you require a guarantee from Mr. Crawford

1066 that these debts should not exceed a hundred thousand dollars; didn't you have some idea of what they were?

A. No, sir.

Q. If your general idea had been that they were ten thousand dollars, and that was all there was of them, you would not have put in a hundred thousand dollars, would you?

A. I should have put in all there was left until they were all cleaned up; I should not have left any to be cleaned up, no matter what the amount was; no business man would.

Q. Did you make any inquiry as to whether they might not amount to four or five hundred thousand dollars?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. Did you have any moral assurance—anything upon such evidence as you would do business upon—that they did not amount to four or five hundred thousand dollars?

A. Only a good business man's sense that he could not have gone on as long as he did if they had amounted to more; his credit would not have admitted it.

Q. One fact you knew, that he owed the First National Bank about $300,000?

A. Mr. Crawford did.

Q. Yes; that is what I say.

A. Yes.

Q. You knew Crawford had had charge of this road in the matter of building it?

A. I knew he was reported to have.

Q. You say you knew that when you went over the road away along in the winter of 1883 or 1884?

A. Where do I say that? Give me the evidence in which I say it.

Q. Do you say you did not say it, or don't you mean to say it?

1067 A. I want to see what I did say, Mr. Cooper; I don't want you to tell me what I said. I want it verified. If I said it I will either correct it there or admit it here.

Q. Do you swear that you did not say here on the witness-stand that you understood that Mr. Crawford was the man who had charge of this road?

A. Yes, sir.

Q. You did not say it?

A. No, sir. I dare say I did say I understood it, because I did so understand it; but I am drawing the line between the understanding and the asserting—that is the idea. I want to get the facts; I understood he was all the way through.

Q. That he was practically in charge and control?

A. Yes, sir.

Q. Of the whole matter?

A. Yes, sir.

Q. Of both the construction and the organization?

A. That is the way I understood it; whether it was a fact or not I would not swear.

Adjourned to Saturday, November 14, 1885, at ten o'clock a. m.

1068 FRIDAY, *November* 13*th*, 1885.

Parties met pursuant — at 2 o'clock p. m.

Present: Same as before.

P. B. SHUMWAY, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. State your name, occupation, and residence.

A. P. B. Shumway; residence, Evanston; I am of lawful age; I have no occupation.

Q. You have been connected with railroads, have you not, Mr. Shumway?

A. Yes, sir.

Q. You have been engaged in railroad construction?

A. Yes, sir; I have.

Q. You are the gentleman who was appointed by the Jasper circuit court of Indiana the receiver of the Chicago and Great Southern Railroad Company?

A. I was.

Q. Do you remember about an order of the court entered in that case on the 5th of January, 1885, which, among other things, required you to make an examination as to the claims against the railway company outstanding?

A. I do; I remember such an order was entered.

Q. And did you or not make the report of the claims that were presented to you?

A. I did make such a report.

Q. Is that on file in this case, or was it filed in the case?

1069 A. It was filed in the case of Hack and others against the Chicago and Great Southern Railway Company.

Q. I will say that case is consolidated with this. That report is not present here at this examination.

A. I have no complete copy of it in my possession. I think the clerk who prepared it for me had it copied; it is among my papers.

Q. Without knowing whether the report was sworn to or not, I will ask you simply as a matter of evidence whether the report you made to the court was correct or not?

A. Correct, to the best of my knowledge. Let me explain: The report was simply a statement—as I remember it—of the claims that were presented to me, without any special examination into their character as to the correctness of the claims. It was a correct report so far as being a full statement of claims that were presented to me.

Q. Did you, after hearing the statements of the claimants, examine the books of the Chicago and Great Southern Railway Company, or any of its officers or agents, with reference to verifying the claims, as to whether they were approximately correct or not?

A. I never came into possession of books of the Chicago and Great Southern Railway Company except the books containing the operating accounts, to my recollection; the books covering the construction accounts were never in my possession, and I don't know where they were; I didn't know they were in existence; I never received possession of them, certainly.

1070 Q. Do you know about the aggregate debts for construction—about how much they aggregate—the debts due for construction outside of the operation?

A. I don't know that I have any. My recollection is that this report that I filed—I havn't seen it or thought of it since the day it was filed, or two or three days after—but my recollection is that that was made out of miscellaneous bills for labor; the labor, I should think, was mostly for operation, and there were bills for stationery, and for timber; some of it must have been for construction. Really, I cannot guess at the aggregate of the amount of claims included in that statement; it has so far gone from my mind. Of course the report will show for itself just what the claims were.

Q. Was there a claim of the Cleveland Rolling Mill Company presented to you?

A. Not as receiver, I think. I have no recollection that it was ever presented to me.

Q. After your appointment as receiver did you confer with Mr. Henry Crawford with reference to what debts there were outstanding against the company, in order to get at approximately what the total indebtedness of the company was?

A. If you mean by that that I had a conversation with him in which the claims were rehearsed or stated in detail, or in general, I don't remember ever having had any such conference. I heard Mr. Crawford say in a general way that the claims did not amount to more than a certain amount—something of that sort; but as
1071 for any formal business conference, with a view to arriving at any conclusion, I do not remember any such conference.

Q. You did not inquire of Mr. Crawford, under this order that was entered and as receiver—you did not inquire of him as to what the claims were?

A. I think not. I think some of the claims that made up the statement, or that were included in that statement, I asked Mr. Crawford if they were correct, and Mr. Crawford furnished me the pay-rolls, which included all the labor claims. I got them from him, and he had the clerks that were familiar with them to go through them and check them over. I know when I first came into possession of them they showed a considerable amount more than they really were, and afterwards Mr. Crawford learned a considerable amount of them had bren paid on vouchers, and the clerks did not check them off on the pay-rolls. I got information from him particularly with regard to that, and I corrected my figures to correspond with the total amount of the pay-rolls and the vouchers. Several thousand dollars, I think, were corrected.

Q. Before you made your report had you conferred with Mr. Crawford, and the agents and clerks of the company, with reference to ascertaining what the probable truth was about the matter about these several claims?

A. As to the validity of them?

Q. Yes; as to their justness.

A. No, sir; for this reason: that these claims were presented to me—most of them—in a thoroughly informal manner. They
1072 came through the mail from Tom, Dick, and Harry. They would write to me, enclosing statement of account without any verification, and there was a master appointed in the case by Judge Ward, of Jasper—Mr. Hall—and I found that they were also filing the same claims with him, and I was informed by Mr. Foster and a Mr. Arnnabel that many of these claims were not correct, some of them entirely unreliable, and I made up my mind there was no way to properly investigate them but to have them investigated by the master, who had authority to administer oaths—con-

duct it in a judicial manner. So I never got to any point where I could make any such investigation.

1073 Q. After you were appointed receiver did you meet Mr. Henry H. Porter and have any talk with him in reference to the condition of the road?

A. I don't remember—after I was appointed receiver, yes; I should think perhaps—I was appointed the last of October. My recollection is that I met Mr. Porter some time in February; he invited me to accompany a party of his friends over the road, and of course in passing over the road we naturally had some conversation about the condition of the road.

Q Between the time you were appointed receiver and the holidays had you met Mr. Porter; from October to the 26th of December we will say?

A. I should think not.

Q. You had not met Mr. Porter at all?

A. Not to have any conversation with him; I don't remember meeting him at all.

Q. You knew him well?

A. Yes; well, now, I could not say that I did not meet Mr. Porter, but I don't remember any conversation; I used to in those days—that is, a year ago—I used to visit the First National Bank quite frequently, and it was not an uncommon thing, Mr. Porter being a director there, to run across him; but my recollection is that Mr. Porter never talked with me about this matter at all during all that time.

Q. Do you know whether he knew or whether Mr. Samuel M. Nickerson knew that you were receiver during the interval that I mention in the last question, namely, from the time you were appointed receiver up to the 26th of December?

A. I think Mr. Nickerson knew; I presume Mr. Porter
1074 did; I have no definite knowledge of that; it is one of those things I should say I knew, but if you ask me how I knew it I should say that I didn't know that I did know it.

Q. You had no conversation with Mr. Porter during that interval or with Mr. Nickerson, as I understand you, as receiver of the road?

A. Or with Mr. Nickerson?

Q. Yes.

A. Not as receiver of the road. Mr. Nickerson has been kind to me in some business matters; during that time we had some unsettled matters together, growing out of business not connected with the Great Southern road; it was my custom to go in there and talk with him freely, and I presume in casual conversation I may have had some conversation with him about this road.

Q. Were you in there frequently during that interval?

A. I should not say very frequently; sometimes I would run in there every week; sometimes I would not go for two or three weeks.

Cross-examination by Mr. PIERCE:

Q. Under that order of yours to make report to the court in regard to outstanding claims, you had no specific field laid out for you, but you were to report all the claims against the road as you found them from the books of the company or from what papers came into your possession and what were presented to you by outsiders, in other words; how did you make up that report?

1075 A. If you will look at the order I think you will agree with me that it was an order of a very indefinite character, and my recollection is, I stated to the judge the fact that I had never pursued any systematic method in getting these claims; as a matter of fact, I asked the judge, soon after my appointment, to permit me to publish, under the order of the court, a request that claims should be filed with me, and he did not answer my letter for a long time, owing to his absence, and then he said it was so near adjourning time of the court it might as well go over until that time, and then he made this general order, and my recollection is that in conversation with him I said to him that these matters had come in in a sort of helter-skelter manner without any uniform method of preparing them, and that I could only file them as they were presented to me, and, as a matter of fact, I took my papers down to Kentland—the case was transferred to Kentland—and I found that the master who had been appointed in the case had got nearly everything that had been presented to me, and I checked over with him, and where I had any additional claims that had been presented they were simply scheduled in addition to what the master had.

Q. Did any of these creditors claim any lien on the road?

A. Not to me; I guess your friend from Crawfordsville—what is his name?

Q. Irwin?

A. Irwin made pretty loud claims, I should think.

Q. Who else besides Irwin claimed any lien on the road, if you remember?

1076 A. It seems to me that the attorney of the Smith Bridge Company called on me and claimed a lien, not on the road, but on his bridge.

Q. On the bridge across the Wabash?

A. Yes, sir.

Q. Under a contract that he had made?

A. Under a contract, I think, that he showed me.

Q. He showed you the contract?

A. I think so; yes.

Q. Are not those two the only ones—the Smith Bridge Company's claim and Irwin's claim; are not those the only claims that were made that they had any lien on the road ahead of the bond?

A. I don't remember any others.

Q. I will ask you if you have, during your investigation of all your claims and during your connection with the road, ever heard any claim made by any creditor of the company that the mortgage was illegal or invalid, or that the bonds issued on the road were illegal or fraudulent?

A. I have no recollection of hearing any such claim made; I should say I never did.

Redirect examination by Col. Cooper:

Q. You heard such claim made before the court at Kentland, did you not, that the bonds were illegal and void?

A. By the creditors?

Q. By their attorneys.

A. Well, I think there was most everything said in those town meetings we had down there in the Kentland court; I should

1077 presume that that claim might have been made.

Q. That was along in February and March, this year, was it not?

A. Last February, I should think, or the first few days of March—O, no; I have no definite recollection of hearing it even then.

Q. Wasn't it insisted there in court at Kentland that these claims ought to be paid, and they were equitably entitled to be paid, prior to the bonds? I mean claims for work done and materials furnished.

A. The thing I remember most prominently, and the only thing I remember that seemed to occupy the attention of counsel and all parties concerned there, was an effort to remove that case from the State court to the United States court, and the merits of these claims were not discussed to any extent in court that I remember.

Q As you understood the matter that part of the business had not yet come up—on the merits of this mortgage?

A. I did not understand it; the case in which I was interested—that is, under which I was appointed receiver—I think had nothing to do with the mortgage.

Recross-examination by Mr. Pierce:

Q. I will ask you if you do not remember there had not been any pleading filed at all in that case down there attacking the validity of the mortgage or the issue of the bonds at that time.

A. My understanding was that a bill had simply been filed at that time.

Q. No answer had ever been filed at all to the bill?

A. No, sir.

1078 Q. And up to that time you never had heard any accusations at all made against the validity of either the mortgage or the bonds?

A. Never. If you want the whole truth, I will say I think I went over to play whist one evening with Col. Cooper, and he said he should attack the validity of the mortgage, but it had not been done in court or anything of that sort.

Q. Nor by any creditor, as far as your knowledge goes?

A. No.

The signature of the witness to the above deposition was waived by agreement of counsel.

1079 SATURDAY, *November* 14*th*, 1885.

Parties met pursuant to adjournment at 10 o'clock, a. m.

The direct examinatien of HENRY H. PORTER was resumed by Col. COOPER, as follows:

Q. In your testimony yesterday the question was asked you: "I mean the contract of June 25th, which was put in evidence, and which you signed, sir. Is that the contract by which Mr. Crawford has sixty days, or his contract made after his sixty days expired?" Will you please state what that contract after the sixty days expired was—that is, whether there was such a contract as that.

A. The contract I referred to was the Drexel, Morgan & Co. contract, of which a copy is here, and which is generally in my mind, and I don't remember when it was made. I will identify the contract.

Q. You asked the question of the counsel, "Is that the contract by which Mr. Crawford has sixty days, or his contract made after his sixty days expired." Now the contract by which Mr. Crawford had sixty days was, of course, the contract of June 25; you recognize that, do you not?

A. Yes.

Q. What did you mean by the language "or his contract made after his sixty days expired?"

A. I meant whether it would be construed as a contract or not,
the letter that Mr. Nickerson and myself wrote to Drexel,
1080 Morgan & Co., getting an option, you understand, or the con-
tract that Drexel, Morgan & Co. sent back, and I did not remember the conditions of that—whether that was a contract that we had purchased, or whether it was a contract that we agreed to purchase, in case he did not fulfill within the sixty days.

Q. What contract was entered into after the sixty days expired—that is to say, after the 20th of August, 1884?

A. I never understood of any with reference to that subject, and I never intended any with reference to that subject.

Q. After the sixty days expired, did you have any arrangement then made with Mr. Crawford?

A. Nothing different from the terms of the proposition to Drexel, Morgan & Co.

Q. You had the contract of December, 26th, which has been introduced in evidence?

A. That was for other property.

Q. It was for this property too, wasn't it?

A. No, sir; it was not intended to be.

Q. I am not asking you, sir, what it was intended to be; this contract includes this property, does it not?

Solicitor for complainant objects to the question on the ground that the contract speaks for itself.

A. I am not discussing the legal aspect. That, I understand, is before the court.

Q. Certainly not; you had some negotiations with Mr. Crawford, is what I am asking about, after the sixty days expired?

A. I had negotiations——

Q. And prior to the 26th of December, did you not?

1081 A. I think not.

Q. None at all?

A. I think not.

Q. Had they all been made before the 20th of August?

A. All what?

Q. All the negotiations with Mr. Crawford which led up to the contract of December 26th.

A. State that again; let me see if I get your idea.

Q. (Question read by reporter.)

A. I made a contract with Drexel, Morgan & Co. for the purchase of the securities purchased of him and paid for. I afterwards made an agreement with Mr. Crawford contemplating the purchase of other property, which led up to the contract of Decembar 26th, if that is the date.

Q. What additional property did you get under the terms of the contract of December 26th, 1884, which you had not already got by the terms of the contract of June 25, 1884?

Solicitor for complainant objected to the question for the reason that the contract itself shows.

A. I got some coal property, and an agreement to pay the liens that were ahead of the first mortgages, and also to pay for any right of way or property that the company was occupying that it did not have title to.

Q. You got an agreemont from Mr. Crawford——

A. You asked what additional property I got.

Q. Yes; in addition to the property which you got under the terms of the contract of June 25?

1082 A. Everything specified in the contract of December 26, beyond the first mortgage bonds and the stock.

Q. That was a hundred thousand dollars of the capital stock of the Union Coal Company, was it not?

A. That was one item.

Q. What other property did you get?

A Such right of way as the railroad occupied that they had no title to.

Q. In whom was the title?

A. I could not tell you; I didn't know; it might never have been paid for, *and* being the original owners to a large extent.

Q. How did you get it by contract with Crawford, if Crawford did not own it?

A. By a reserved fund to pay for it with.

Q. You had the pay for it out of the purchase price, didn't you?

A. Out of what purchase price?

Q. The purchase price of these securities.

A. No, sir.

Q. You did not?

A. No, not out of the purchase price of these bonds; that was an additional sum for these other securities, and which I retained this to pay for.

Q. Mr. Porter, it appears by the contract of June 25, with Drexel, Morgan & Co., and the letter of January 12, 1885, that the total amount of indebtedness to Drexel, Morgan & Co. was 392,000 and odd dollars?

A. Yes, sir.

Q. Now, then, by the contract of December 26th, you agreed to pay $500,000?

A. Yes, sir.

Q. And then give Mr. Crawford an interest in one-third?

A. Yes.

1083 Q. Of the securities that you purchased under the contract of December 26th I will ask you what explanation, if any, you have got to make of that matter other than you have made.

A. I understand that you state the contract as I understand it or as it was made.

Q. Have you got any explanation to make of why it was that you, having made a purchase, as you say, from Drexel, Morgan & Co. of these securities for 392,000 and odd dollars, and then, that being the entire amount of the purchase price, you turned to and purchased from Crawford by this contract of December 26th the same property, including the coal stock, for $500,000, giving Crawford back an interest of one-third in one-third of the property thus purchased, which should not amount to more than $250,000—why it was that you made that second contract? That is what I am after.

A. It was a method of securing to the First National Bank its $250,000, or whatever the amount was, of second security which we had an understanding about, that if I bought these bonds it would pay them and secure the property that the road occupied that might not be covered by the mortgage and securing the coal stock.

Q. After you had made the contract of June 25 Mr. Crawford placed in the hands of Drexel, Morgan & Co., to be covered by that contract of June 25, $1,200,000 of the stock of the railway company, did he not?

A. I don't know whether he placed it there before or after.
1084 I think it was a part of the security I understood to be deposited with Drexel, Morgan & Co. as collateral, and part of the security that we bought.

Q. Under date of August 13, 1884, Drexel, Morgan & Co., in a letter introduced in evidence of that date, say: "Mr. Henry Crawford has caused to be delivered to us 12,000 shares of the capital stock of the Chicago and Great Southern Railway Company. Mr. Crawford has also effected the delivery to us of $200,000 of the bonds of the same company (duly certified by the trustee), in addition to the one million dollars of said bonds which we already held." Now, refreshing your recollection by calling your attention to that extract from the letter of August 13th, do you not know that after June 25 and before August 20 Mr. Crawford placed the 12,000 shares with Drexel, Morgan & Co., and also the 200 additional bonds?

A. I know nothing. I have no doubt the letter is strictly true, and, as I understood it before, that is done in compliance with an agreement that Mr. Crawford made with them, or what he would do as a part of the collateral of the indebtedness that lay there, and it was to have been done, and would have been done, whether I bought the Drexel & Morgan debt or not.

Q. Why do you say it would have been done whether you had bought that or not?

A. I say as I understand; that is what I said to you, as I understand, because Drexel, Morgan & Co. put into their contract with us—one reason is, Drexel, Morgan & Co. put into their contract just now before you, if I remember rightly, that they 1085 were not obliged to deliver to us and we were not obliged to take until Mr. Crawford should first fulfill these conditions, and that, had he not done it, we should have been obliged to pay the debt and take the bonds.

Q. You did understand then, when you entered into the contract of June 25th, that there was something to be done by Mr. Crawford in the way of putting up additional securities which you were to have under your contract, which he had not at that time done?

A. I understood Crawford was to continue to carry out with Drexel, Morgan & Co. what he had agreed with them he would do, and when he had performed that they then had sold this property for this price.

Q. What I am asking you is whether you understood on June 25th that there was something to be done in the way of putting up additional securities with Drexel, Morgan & Co. under their contract with Crawford, which had not been done at that time?

A. Yes; I understood that under their contract with Mr. Crawford he was to do some things, perfect some things, that were not perfected.

Q. Did you know what those things were?

A. Only in a general way.

Q. How general was the way?

A. Well, that was to put up some stock.

Q. How much?

A. I don't know that.

Q. What else?

A. I think I saw that he was to put up some bonds.

1086 Q. How many?

A. I don't know; I simply knew that when the thing was done there were so many securities to be there, and I didn't keep the book-keeping of how the thing was going on.

Q. Have you brought in the letters of David Dows?

A. Yes.

Q. To and from him?

A. I brought in my letter-book. Mr. Hillard was to bring the letters, and I want to know what the order of the court is, so as to know what I shall produce.

Q. Haven't these gentlemen told you what the court said?

A. Only in a very general way; I want to see what it is.

Q. What is your general way, as you understand it?

A. My general way of understanding is that I am not to produce all the letters I have written to David Dows, but only such letters as refer to this transaction, and only such portions of those letters as refer to these transactions.

Q. Except I want to see, or I want the commissioner to see—I am not particular about that—the letters. I do not wish to pry into your private affairs.

A. That is the only point I have.

Q. Have you got the letters here?

A. Mr. Hillard has looked them all through, and I have looked through my letter-book. I told him to bring all the letters here because that was the point.

Q. The letter you have just laid aside, what date does it bear?

A. February 5, 1885.

Q. Does that letter refer to the securities of the Chicago & Great Southern, or to that railroad in any way?

1087 A. It does not refer to the securities; this simply relates to the suggestion who is to be the trustee for the new mortgage.

Q. Now, take the next letter—give me the date of it.

A. January 16, 1885.

Q. Will you please turn to your letter-book and see a copy of a letter of December 3.

A. This was a letter signed by Richard Hoe, Jr., and I brought those in the same way, as they were letters written for Mr. Dows. He is his private secretary. This is a letter from Richard Hoe, Jr., to me.

Q. But on behalf of Mr. Dows?

A. On behalf of Mr. Dows; yes, sir.

Q. Will you please read the letter of December 3, 1884, to Mr. Dows from you, which is referred to in his letter of January 16.

A. (Witness produces letter.)

Q. You had corresponded with him prior to that time?

A. Yes, sir.

Q. Turn to your letter to Mr. Dows calling his attention to this matter.

A. It is November 13, 1884.

Q. I will ask you to produce the letter of November 13, 1884, and let it be copied as part of your testimony. From whom is that written, and to whom?

A. From myself to David Dows.

Q. From yourself in Chicago to David Dows, of New York?

A. Yes, sir.

(The witness then read the letter as follows:)

"To such an extent am I convinced of coming improvement that I have bought a little railroad in Indiana, the same one that 1088 Mr. Bishop came out and went over, and that he and Mr. Brewster, in a conversation I had with them last summer, concluded it was not worth while to bother with. It is small, only seventy-seven miles long at present, but I expect — to grow up into a railroad of about one hundred and fifty miles. It is a coal road, and owns considerable coal lands and one coal mine. The whole property I do not expect will cost $750,000. We buy all the first-mortgage bonds for not to exceed $400,000, and we buy a second lien on those bonds for $240,000. They, the bonds, being put up as collateral, first for the $400,000, and afterwards for the $240,000. The parties give us a good guaranty that all the liens of every name and nature ahead of the bonds shall not cost us to exceed $100,000, and we agree if they cost less that they shall have the benefit, and if they cost more they are to pay it.

"This makes a total, as stated above, of, say, $750,000. The parties owning the indebtedness of $250,000 subscribed this sum towards the purchase. Myself and associates subscribed the other $500,000, and the subscribers of the $250,000 make a contract with us that if there is any loss in the venture they will contribute the proportion of that loss which their interest bears to the whole purchase-price, or, in other words, one-third. They, however, agree that any profit in the venture over and above giving them their $250,000 and interest at six per cent. shall belong to the parties subscribing $500,000 of money.

1089 "Confidentially I will say to you that Mr. S. M. Nickerson takes $150,000 of this investment, I take $200,000, and other parties here want $50,000, leaving $100,000 that I am willing to take myself or place here, but if you and Mr. Flower, or either of you, would like the whole or any part you can have it, and I want you both to take your own choice unbiased by my recommendation. I would like to have you show this letter to Mr. Brewster and Mr. Bishop when you happen to meet them, because I want them to know just exactly what I have done. I think I have not misunderstood them in their view that it was a bad time, and under the circumstances they did not wish to go into it.

"My intention is to make it a coal road. My general plan, believing that the road will grow up into a very active one within a few years of coal traffic, is to foreclose the mortgage and reorganize it into a new company; we shall then own the road without any securities upon it. When we have done that we put a mortgage on of $15,000 per mile, running fifty years, at six per cent., with the right to add $5,000 per mile of these bonds for equipment, and $7,500 per mile for any double track that may be required. As we sell these bonds, which I mean to make a first-class bond, I shall put away in the trustee's hands two years interest, so that we may have that on hand whilst we are progressing with our work and not be tempted to pay interest money out of earnings before we can
1090 afford it. Then I propose to use about $100,000 of the proceeds of the bonds in improving the present road, and the balance will go in the construction of a new road from its present southern terminus towards Brazil. In this way we shall always have money on hand to pay for the road we build on which we shall in turn get new bonds, to be sold ahead of further expenditures.

"The road now runs from Fair Oaks, on the Louisville, New

Albany and Chicago railroad, to Yeddo, in Fountain county, Indiana. Mr. Bishop has been over it and can show you where it is. It seems to be a road that, in my opinion, can be made to earn seven per cent. on $40,000 per mile within, say, three years.

"If you want to know more about it I shall be glad to give you any information you ask."

1091 Q. Who were Mr. Bishop and Mr. Brewster?
A. They are personal friends of mine in New York.

Q. Had they been examining into this road?

A. Mr. Bishop had been over it with me.

Q. With you?

A. Yes, sir.

Q. When?

A. I think some time in June, 1884: somewhere along there.

Q. Who was the other gentleman; had he any connection with the road?

A. No; none whatever.

Q. You say in the letter "The parties give us a good guaranty that all the liens of every name and nature ahead of the bonds shall not cost us to exceed one hundred thousand dollars, and we agreed that if they cost less that they shall have the benefit;" had there been an agreement made?

A. That letter was where Mr. Nickerson and myself had talked the matter, or I understood him he had talked to Mr. Crawford to the extent that this contract could be made, and I wrote it in the light of verbal conversation and without any contract being made by any one at that time beyond the contract of Mr. Nickerson and myself with Drexel, Morgan & Co.

Q. Who are the persons referred to there: "The parties give us a good guaranty that all liens of every name and nature ahead of the bonds shall not cost us to exceed a hundred thousand dollars." Who were those persons?

A. That was left elastic, because my negotiations were with Mr. Nickerson. Speaking for the bank and myself and associates,
1092 [we] were unwilling to put our money in without that guaranty coming in a satisfactory manner.

Q. Did you get the guaranty?

A. We considered we got it in the contract.

Q. From whom?

A. We considered we got it really from the First National Bank.

Q. In this syndicate contract signed by Henry Crawford?

A. That is the way I construed it, sir, with the facts as I had them before me?

Q. What facts did you have before you different from what you have now?

A. The fact that the Second National Bank controlled this second lien, and Mr. Crawford being its debtor, that they had an arrangement with Mr. Crawford by which they insured the carrying out of the agreement.

Q. You say "We buy a second lien on those bonds for $240,000;" that was the bank's second lien, wasn't it?

A. Yes, sir.

Q. In this letter you say: "They, the bonds, are to be put up as collateral, first for the four hundred thousand dollars, and afterwards for the two hundred and forty thousand," and then you go on to say "that the parties give us a good guaranty." Now, what I am asking about is, what negotiations had taken place at that time so that you would make use of that word "the parties?"

A. Mr. Nickerson, the First National Bank and Mr. Crawford; assuming Mr. Crawford, through the representations of the First National Bank of what they would have made it.

1093 Q. You were one of the directors of the First National Bank?

A. Yes, sir.

Q. You had not any agreement in writing at that time, and never did take any from the First National Bank that they would guarantee this thing, did you?

A. No, sir.

Q. Did Mr. Nickerson say the bank would guarantee that?

A. That was the understanding all the way through, that the bank would have it guaranteed satisfactory to us.

Q. And that you were acting in concert with Mr. Nickerson in the interest of the bank?

A. I see nothing inconsistent in my statement with that view.

Q. You say the parties owning an indebtedness of $250,000 subscribed this sum towards the purchase; who were those parties?

A. I think I stated to you there was no contract made at that time; that was the general plan and it was not put in that shape, whilst it was intended to cover about that.

Q. The letter says, "The parties owning the indebtedness of $250,000 subscribed this sum towards the purchase." I am asking you who those parties were?

A. Nobody did subscribe.

Q. Then that letter is not true in that respect?

A. It is the truth in respect to anything further than the general plan, for there was no legal binding purchase at that time; no, sir.

Q. There was not any legal binding obligation with the First National Bank and never had been any, was there?

A. No, sir; and there was not with me; it was entirely verbal.

Q. "Myself and associates subscribe for $500,000?"

A. Yes.

1094 Q. Who were those associates at that time?

A. I had not any. I had not a single associate that was bound; in conversation with people they said they would.

Q. At the time this letter was written, on November 13, 1884, who were the people you had talked with about going into this enterprise?

A. I could not remember, and, consequently, would not undertake to say.

Q. Can you name any man?

A. No, I cannot swear to any particular man; my conversations with them were from time to time, and my data as to when I met them and which one I conversed with first and which I conversed with last, that has gone from my mind.

Q. You say further along, "The subscribers of the $250,000 make a contract with us that if there is any loss in the venture, they will contribute the proportion of that loss which their interest bears to the whole purchase price, or, in other words, one-third." Who were those parties you referred to?

A. I referred at that time to the bank as a party, because of its second lien.

Q. Had the bank, by any action of the board of directors or by the general common consent of the board of directors, without taking any official action, agreed to do that—the First National Bank?

A. As I said before, the letter is a letter stating what I had done verbally and what other parties had agreed to do in turn, verbally, on the general principal.

1095 Q. I ask you whether the board of directors of the First National Bank had agreed verbally to do that?

A. No; I don't think the First National Bank directors—I don't know how they can act particularly verbally for the bank.

Q. I am not talking about legal technicalities here. I am asking you whether you, as a matter of fact, had talked with the directors or agreed with the board of directors of the First National Bank, at the time you wrote this letter of November 13th, and they had agreed that if this thing went through that they would make a contract with you and your syndicate that if there should be any loss in the venture they, the bank, would contribute the proportion of that loss which their interest bore to the whole purchase-price, or, in other words, one-third.

A. Yes.

Q. Which directors of the bank had you talked with at that time who had agreed to do that thing?

A. I had talked with Mr. Nickerson and I had talked with Mr. Gage, and I want you to put the question, because I think you misinterpret it, before I say anything further, to read that as "for us" they had not agreed that they would not hold some securities for Mr. Crawford to protect them; they had agreed as for us, to stand in that position, the subscribers.

Q. Did you afterwards require them to do that when you made the contract of December 26th?

A. I certainly did not.

Q. What obligation did you have of the First National Bank for that?

A. The understanding *that* the First National Bank

1096 was, that they made this agreement; that they did it in Mr. Crawford's name because they controlled the indebtedness, and had an arrangement with Mr. Crawford that he would assent to it and they had their arrangement with Mr. Crawford.

Q. In other words, the signature of Henry Crawford here, you understood, bound the First National Bank to this agreement of December 26th; is that it?

A. I understood Mr. Henry Crawford could not make that agreement, situated as he was with the First National Bank, until the First National Bank had practically authorized him to do it, and agreed to take the assignment of the matter there, and that, without their agreement to carry it out in that way, it would not have been made.

Q. Did the First National Bank subscribe the $250,000?

A. No, sir; not in form as that letter indicated.

Q. Did anybody subscribe it for them?

A. No, sir.

Q. Why wasn't that carried out?

A. The principle of it we construed to be carried out, and there is a reference to it in the contract of December 26, 1884; it is the same thing; they agreed we should not pay except upon those terms.

Q. You say that "Mr. S. M. Nickerson takes $150,000 of this investment; I take $200,000, and the other parties here want $50,000, leaving a hundred thousand that I am willing to take myself or place here, but if you and Mr. Flower or either of you would like the whole or any part you can have it, and want you both
1097 to take your own choice unbiased by my recommendation." Now, that makes up $500,000, does it not, that you speak of?

A. That plan was changed afterwards.

Q. The other parties who were wanting $50,000, who were they?

A. I don't remember; there were several people talked with me about it; that subscription was afterwards made $600,000; that was what was contemplated at that time, but it was enlarged, and I see by the subscriptions made that the amounts were changed.

Q. Now, what reply did you get from David Dows to that letter?

A. I got no reply except this one of January 16, which I read: "I should have written you before in the matter of your new railroad in Indiana had not Mr. Dows been out of town," and I suppose that refers to this letter.

Q. Is that a letter that refers entirely to this matter?

A. I have no other; I have no record of any other, and I have no remembrance of any other, and I assume that it is.

Q. Have you got a copy of a letter in your letter-book written to Mr. Dows under date of December 3?

A. That is the one I read to you to Mr. Hoe?

Q. Who was Mr. Hoe?

A. Mr. Hoe was a son-in-law of Mr. Dows, and I was advised by Mr. Dows that he intended him as his private secretary, as he was not in good health and wanted some one for that purpose.

Q. That is, he, Mr. Dows, was?

A. Yes.

Q. And Mr. Hoe in this correspondence represents Mr. Dows?

A. Yes.

Q. You wrote a letter, then, to Mr. Hoe on December 3?

1098 A. I did, sir.

Q. Does that letter refer to any previous letter that you had received from David Dows or from Mr. Hoe?

A. That letter has been read to you once here, sir; I will read it again, if you like?

Q. Did you read it all?

A. I read all that related to this subject, entirely.

Q. Does any other part of the letter refer to any previous letter received by you from Mr. Dows or Mr. Hoe?

A. No, sir. It says: "Your note is received; please say to Mr. Dows that I think he is wise not to bother himself with that investment."

Q. Will you please read so much of that letter of December 3 to Mr. Hoe? Is it directed to Mr. Dows?

A. It is directed to Richard M. Hoe, account David Dows, New York.

Q. Will you please read so much of the letter as relates to the Chicago & Great Southern matter?

A. "You note is received. Please say to Mr. Dows that I think he is wise not to bother himself with that investment, although I shall be disappointed if it is not very profitable. I wrote him, as I always shall about these things, with a remembrance of his friendship and sustaining of me when I needed it, and that he may always feel that I would like to have him with me when I see an opportunity of this kind, when he knows I want him to do just according to his own inclination. This matter will not be closed until the first of January, and, although the subscription will be filled, I
1099 shall take so much personally; that if he wants some part
of it on or before that time and will let me know I shall be entirely willing to let him have it."

Q. Is that all the letter?

A. That is all the letter that relates to anything connected with this.

Q. Have you any letter from David Dows or Mr. Hoe, in the interim between November 13 and December 3, which is referred to in this letter of yours of December 3?

A. Mr. Hillard can tell that.

Mr. Hillard: I have looked for such letter, but I cannot find it; I have a recollection of a letter, I think, which simply said he was an old man and did not want to go into any new investment; I think that is all.

Col. Cooper: Have you any letter written to David Dows or Richard M. Hoe, Jr., during that period?

A. I have a letter of November 15, which has no connection with this transaction in any way or shape.

Q. What is the first letter you have in your book, after December 3, to David Dows with relation to this matter, or to Mr. Hoe?

A. The letter of January 20.

Q. What does that letter say?

A. It is addressed to Mr. Dows.

(Witness reads letter as follows:)

"Mr. Hoe's letter of January 15, 1881, saying that you would like

to take twenty-five thousand dollars in our syndicate for the purchase of the Chicago & Great Southern railroad, is received, and I take pleasure in putting you down for that amount. Within
1100 a few days I will send you a copy of the subscription paper.
It is being printed now and will be an agreement of purchase, and as we do not need the money for a short time you can send it to me at you convenience. When you send it I would like to have you add to it the interest at six per cent. from January 15 until the 22nd, as I have considered the money on deposit by you subject to my order after that date.

"My only reason for asking this is that all subscriptions may be exactly alike, payment being due on the 15th of January. It is purely a technical point, and I am looking after technical points now." I had not been before that time. "When you get the subscription paper, if there is anything in it by which you would prefer not to subscribe, please do not feel that you must. I want you, Mr. Dows, to do just exactly what you wish to in this matter. The aggregate subscribtion is a hundred thousand dollars more than the obligations we have assumed, so as to leave us money in hand for any little thing it will be wise to do pending the foreclosure."

Q. From the 13th of November to the 20th of January did you see Mr. Dows or Mr. Hoe, or any one of them, personally?

A. No.

Q. So that the entire correspondence on your part with Mr. Dows, including the letter of November 13, up to the time of Mr. Dows' subscription and payment, you have read?

A. I have no remembrance of seeing Mr. Dows or Mr. Hoe in the meantime; I don't think it possible that I could have; I have no remembrance of any other correspondence than this, and can
1101 find no record of any.

Q. Mr. Henry Seibert was one of the subscribers, was he not, to this syndicate?

A. Yes.

Q. That is the only letter on this subject from Dows, isn't it, January 16?

A. I shall refer to Mr. Hillard; I have given him charge of all my papers.

Mr. Hillard: That is the only one I can find.

The Witness: I have no idea of any other. I speak with great caution, because I have had men in my employ who have been sneaking into my books, and I don't want to be responsible for papers they may find that I don't know anything about.

Col. Cooper: Why do you say that?

A. I say that because you have had a man that was in my employ giving information and taking papers of mine, and who has got property of mine to-day that he has taken out of my office without the knowledge of anybody that I know of.

Q. What man?

A. Mr. Lacey—F. F. Lacey—giving evidence, I mean.

Q. You know he has taken things out of your private papers, do you?

A. I believe he has.

Q. What is your evidence of anything of that kind?

Objected to by solicitor for complainant.

A. I state it out of my abundant precaution, from having somebody the custodian of my books who was not to be trusted, and having been unfortunate in having a man in my employ that was doing these acts. That is why I state it. You can put it
1102 down or not as you choose. That is why I am so particular
in my statement, and why I want to be more than thoroughly honest in swearing to things that are not very well fixed in my mind.

Q. When did this Mr. Lacey leave your employ?

A. I don't remember.

Mr. HILLARD: From the middle to the end of May, I think.

Col. COOPER: You knew Mr. Seibert?

A. Yes; very well.

Solicitor for complainant offered in evidence the following letter:

"NEW YORK, *Jan.* 16, 1885.

"H. H. Porter, Esq., Chicago, Ill.

"MY DEAR SIR: I should have written you before this in the matter of your new railroad in Indiana had not Mr. Dows been out of town. He returned Monday last from Lakewood, N. J., where he had been spending two weeks, and I reminded him of your letter of Dec. 3 in regard to the subscription to this investment, and he says if it is not too late (although it is considerably beyond the date on which you stated the list would be closed, Jan. 1), and it will not inconvenience you in any way, you may put him down for $25,000 (twenty-five thousand dollars). Please let Mr. Dows know at what time and how you would like the money.

"I met Mr. Henry Seibert a day or two since, and was
1103 glad to learn from him that he had recently gone over the
road and fully confirming all your views as to the ultimate success of the undertaking.

"Very truly yours, RICH. M. HOE. JR."

Q. In this letter just introduced in evidence from Mr. Hoe to you under date of January 16, 1885, he says: "I met Mr. Henry Seibert a day or two since, and was glad to learn from him that he had recently gone over the road, and fully confirming all your views as to the ultimate success of the undertaking." That is the road in question, is it not?

A. Yes, sir.

Q. The Chicago & Great Southern?

A. Yes.

Q. When was Mr. Henry Seibert out here?

A. I don't remember; he has been here two or three times.

Q. Where does he live?

A. He lives in New York.

Q. Was he out here prior to the 25th of December?

A. That I cannot answer.

Q. This letter of January 16th, 1885, does that confirm your recollection in any way?

A. I do not remember the time of going over distinctly, but I have no doubt it is true, because if it had not been it would not have been so written.

Q. When did you first approach Mr. Seibert on this question of taking an interest in this venture?

A. That I could not tell you; it was about the time I talked with the others.

Q. Along in the fall of 1884?

A. I should say so; yes.

Q. Did you talk with him or did you correspond with him?

1104 A. I think I talked with him, and still I may have corresponded.

Q. Will you please look in your letter-book and see if you have any letters to him on this subject?

A. I will. I find a letter of December 18, 1884, in which it would indicate that he and I went over the road together, but I cannot remember it, and I guess I did not go; shall I read the letter?

Q. Yes.

A. "Your favor of December 15 is received. The weather here is fearfully cold at present, but I would like to have you go over the property with me. If you will hold yourself in readiness to come I will telegraph you as soon as I think we can do it comfortably, and will arrange to go with you." I cannot for the life of me tell whether that amounted to anything or not.

Q. Have you any previous letter to Mr. Seibert?

A. I cannot find any.

Q. This letter you have just read from yourself to Mr. Seibert intimates, does it not, that there has been some previous correspondence or talk about the matter between you and Mr. Seibert?

A. O, I think we had had a talk before.

Q. Where and when?

A. Well, I cannot tell; it seems to me he was to be here that summer.

Q. In the summer of 1884?

A. It seems to me he was, but I cannot tell where nor when I had it, and I don't know when he did come. I find another letter to Mr. Seibert without a signature, but it is evidently an authorized letter from me.

1105 Q. Of what date?

A. December 30.

Q. Does that refer to this matter?

A. Yes; it is the only one that refers to it.

Q. Read that.

A. "December 30, 1884.—Mr. Henry Seibert, Warren street, New York city: Mr. Porter requests me to write you and state that he has arranged to make his trip over the Chicago and Great Southern, leaving here on January 7th next, and he would be glad if you could be here that day to go with him. Of course it is possible that this date may be changed in consequence of the weather, but should that be the case he will advise you by telegraph in time to prevent you from starting. Unless you receive such message you will understand that they will start on the 7th."

Q. Don't you find in the index to your letter-book any other letters to Mr. Seibert?

A. No other letters to Mr. Seibert; no, sir.

Q. What pages are those?

A. 357 and 264.

Q. Who was Isaac H. Wing, who subscribed to this syndicate?

A. He is a gentleman living up in Wisconsin.

Q. Whereabouts?

A. I think at Bayfield; somewhere in that section. He is a bachelor, and I think he calls his residence Bayfield.

Q. Who is E. W. Winter?

A. He lives at St. Paul; he is assistant or vice-president of the St. Paul, Minneapolis & Omaha railroad.

Q. Who is John M. Durand, who subscribed?

1106 A. He is a gentleman I have known for a good many years here in Chicago.

Q. Does he live in Chicago?

A. I don't know where his residence is. He used to; he is travelling a good deal, and I don't know what he calls his legal residence.

Q. Is he a member of the firm of Durand Brothers & Powers?

A. No, I think not; it is John M. Durand that used to be John M. Durand and Co. He is retired from business.

Q. He makes his general home here?

A. I don't know whether he does. He spends more time in New York, and has been in Europe a good deal within the last two years; he has been travelling a good deal with his wife.

Q. Who is Mr. Cable?

A. Mr. Cable is president of the Chicago, Rock Island and Pacific railroad.

Q. Does he live in Chicago?

A. Yes, sir.

Q. How were your interviews with Mr. Durand carried on—by letter or by personal interview?

A. I think conversation entirely, but I am not sure. I may have had some correspondence; would you like to have me look?

Q. Look at your letter-book and see if you have any to him.

A. (Witness refers to book.) "January 2, 1885.—John M. Durand, Palmer House: I have got the papers in shape in the matter I talked to you about. If convenient for you to call at my office tomorrow morning at 12 o'clock I will be glad to show them to you."

Q. How did you communicate with Mr. Winter?

A. I think by conversation.

1107 Q. Look and see if you have got a letter to him.

A. I have got fifty; I haven't any idea I wrote to him on that subject, although I could not swear.

Q. Look at the first one after the date of August 20th.

A. They are mostly receipts and have nothing to do with this matter?

Q. Isaac H. Wing, have you got any correspondence with him on this matter?

A. No, sir.

Q. Up to the time you made this contract of December 26th, 1884, had you ever seen the mortgage on the Chicago and Great Southern railway?

A. My impression is not.

Q. You say you had never seen the construction contract of Mr. Crawford?

A. That is my impression; if I had it had no bearing on my mind, and I don't remember it.

Q. You knew he had a construction contract?

A. I would not say that.

Q. Let me call your attention to a provision of the contract of December 26th, and then see what you say: "Section 2. The party of the first part will within twenty days from the date hereof procure the construction contract heretofore, to wit, on or about the 18th day of March, 1882, entered into by and between him and the said Chicago and Great Southern Railway Company for the construction and equipment of its railroad to be cancelled, and will discharge by proper and valid instrument said company of and from any and all claims which he may have under and by virtue of said contract to any of the income bonds of said company, as therein provided, and from any and all other or further claim or claims upon said company under said contract, or in anywise out of the same growing." Now must you not have known at that time about Crawford's construction contract? 1108

A. Previous to signing that paper?

Q. Yes.

A. Not necessarily.

Q. Do you remember why it was that you required that contract to be cancelled and the company released from the obligations in the contract?

A. I have no special recollections of it at all; naturally it would be from the examinations or from the language and the examinations of the lawyer who drew the paper. It did not come from me.

Q. As I understand from you, you turned that over to Col. Spooner?

A. Yes, sir.

Q. You trusted him?

A. Yes, sir.

Q. To make all the examination that was required in order to have this thing straight and right as you wanted it?

A. I want to modify that a little.

Q. Put it in your own way.

A. I trusted him, he of course being dependent on me for certain suggestions of things that I might know about and which perhaps he was not thoroughly enough familiar with.

Q. When did Col. Spooner first know about this railroad matter?

A. My impression is not until after I bought the bonds of Drexel, Morgan & Co.

Q. Prior to December 26th?

1109 A. Yes, I should say he knew it before that.

Q. From whom did he get what information he had?

A. It was largely from me.

Q. You were the gentleman who told him to look into this matter?

A. I have no doubt of it.

Q. And you trusted to him to make all the examination that was requisite to make in order to secure the benefit of the arrangement to you and your associates as the arrangement had previously been agreed upon?

A. If you would like me to explain the working of my mind on it I will try and do it.

Q. I don't want you to explain the working of your mind on it. I simply ask you whether you turned over to Col. Spooner the matter of examining into the title of this property, and the security of these bonds, and the capital stock of this company.

A. I turned over to Col. Spooner the matter of examining after I came into the possession as owner of the bonds, not with reference to my becoming the owner.

Q. Why are you so careful to state that in that way, Mr. Porter?

A. Because of the reason in my mind under which I purchased the bonds, and which had no relation to it; that is the reason; so that it may not be misunderstood; so that my action may not be misunderstood.

Q. On November 13, when you wrote to David Dows, it was your understanding, was it not, of the situation, that you were in
1110 entire control of the property, or could be at any time you chose?

A. That I was in entire control of the bonds, and could foreclose it.

Q. How about the capital stock?

A. I had the entire control of the capital stock.

Q. You well knew that the man who controlled the capital stock of a corporation controlled the corporation, didn't you?

A. Not necessarily. I haven't seen that work always by a good deal.

Q. That is generally the way it works, isn't it?

A. Not when a receiver is in charge, as it was there. The receiver generally controls it through the court. A stockholder has not much to do with it.

Q. I mean the organization—as to what the company shall do or say as a company. You knew, did you not, from your experience with corporations, that the person who controlled the capital stock of a corporation ultimately could control the corporation through the board of directors, did you not?

A. I knew that the parties who controlled the capital stock of a solvent corporation could control it; I didn't know that they could of an insolvent corporation, or one that was in the hands of a receiver.

Q. So when this receiver was appointed it was your understanding that nothing further could be done by the corporation?

A. The receiver was appointed before I knew anything about it—before I had any idea of his being appointed.

Q. How long after he was appointed did you know he was appointed?

1111 A. I don't know, for I don't know when he was appointed. The first thing I heard was that he was there.

Q. That was on the 27th of October, I believe; you knew it before the 26th of December, did you not?

A. Undoubtedly I did.

Q. And had you not made a trip down over the road between the time of the appointment of the receiver and the 26th of December?

A. Yes; I think I had.

Q. Did you not go down to see the judge of the court who had appointed the receiver in that interim?

A. My impression is not.

Q. You did not?

A. My impression is not in that interim; I did go and see the judge afterwards.

Q. Do you know at whose instance the receiver was appointed?

A. I have only a cloudy idea from information since; I knew nothing of it at the time, and I have simply been told that it was in the Hack suit, and that is so mixed up that it is a good deal like that Schleswig-Holstein case; I don't know much about it.

Q. Your expectation was, was it not, to control this corporation; you were buying the securities and expected to control the company, did you not?

A. No, sir; I didn't expect to control the corporation.

Q. You and your associates, did you not expect to control the corporation?

A. We did not, sir, as I understand the question—as I understand controlling corporations.

1112 Q. When you bought the bonds and stock, or entered into that contract for the purchase of the bonds and stock, as you say, of Drexel, Morgan & Co., you expected that you were buying at that time, did you not, the entire property of the corporation—that is, the securities which represented it?

A. I expected we were buying all the securities which represented it, but not the entire property.

Q. What part of it were you not to have?

A. I considered there was nothing there except what the bonds would cover, so that they could be foreclosed.

Q. Then by owning the securities you would be in control of the property; isn't that the way?

A. No, sir; by owning the securities we could go into court and have the court decide and foreclose the property.

Q. From the 20th of August down to the time of the appointment of a receiver what steps did you take with Mr. Crawford about the property; what inquiries did you make; what investigation did you have?

A. I don't think I had any conversation with Mr. Crawford about it; if I had I don't remember—nothing bearing on this subject.

Q. Did you ever ask to see the record-book of the company?

A. I never did to my recollection until after——

Q. I mean prior to the 26th of December?

A. I think not.

Q. Are you certain about it?

A. I am not certain, but I have no recollection of it, and I don't believe I did. I may have asked to see it with reference to
1113 some particular thing, but I have no recollection of it, and I think not.

Q. Can you swear positively as to whether you ever did see it?

A. I cannot.

Q. Previous to the 26th of December, 1884?

A. I cannot.

Cross-examination by Mr. PIERCE:

Q. Mr. Porter, you have stated you had no business connection or otherwise with Mr. Crawford previous to January 1, 1884; that is correct, is it?

A. To the best of my belief; I have no recollection of any.

Q. After that time your attention was called to him by reason of his indebtedness to the First National Bank, was it?

A. Yes, sir.

Q. And you stated you had your attention in that way called to the Chicago and Great Southern railroad in the early part of 1884?

A. Thereabouts.

Q. I wish you would tell us, Mr. Porter, what you had in view when you took the part in it that you have mentioned yesterday about going over the road with a party, including Marshall Field and others, what you had in view when you went over the property at that time to look at it. State that a little more fully than you did yesterday.

A. I simply had in view looking at the property to see what its value was and to see whether it was anything that would
1114 interest us as individuals to take hold of, if we could agree upon terms with Mr. Crawford, you understand, and at the same time help to protect the interest of the First National Bank in the indebtedness they had against it, having practically in mind helping him to place some securities so that he could go on with it himself.

Q. I will ask you if your trip at that time was not exclusively to look at the physical condition of the road.

A. Entirely.

Q. And the general character through which the road run?

A. Entirely; that had to be done to form an idea of the value of the property.

Q. And that was done with the view of taking an interest with Mr. Crawford, was it?

A. It was done with the view of doing whatever might seem best after that that we could agree upon.

Q. Was there, after that, any special plan in view of taking an interest?

A. Nothing whatever.

Q. On that trip all you had to do at that time was to look over the road in a general way, look at its physical condition and the general character of the country through which it ran?

A. Entirely; to see what the property as a property, in my judgment, was worth.

Q. Do you remember about the time that trip took place?

A. I remember it was very cold weather when we made that trip.

Q. Along in February or March of the year 1884?

A. I would not swear that it was February or March; my
1115 impression is somewhere about that time; but it was very
cold weather; I haven't looked it up to see; my memory of
those dates is not good.

Q. Do you remember about what time the Bishop trip took place; was it shortly after that trip?

A. My recollection is that it was in the summer, and I only recollect that from incidentally remember- standing outdoors when it was warmer, and the other when it was as cold as blazes.

Q. I will ask you, was that before the Drexel, Morgan & Co. contract—before you bought the bonds from Drexel, Morgan & Co.? That is, when I speak about buying the bonds from Drexel, Morgan & Co., I mean the contract that you made with them of the 25th of June, 1884.

A. My impression is it was.

Q. It was some time before that?

A. Yes, sir.

Q. Now, what came, Mr. Porter, of either of those trips, or both of them?

A. I could not find anybody that went with me on either trip that wanted anything to do with it.

Q. So whatever plan or proposition was made at that time was dropped—that is, it didn't develop into anything?

A. They were discussed as things that had to be given up, and were given up and dropped.

Q. So there was no plan or basis of taking an interest in the road at that time discussed, was there?

A. None whatever.

Q. None at all?

A. None whatever.

Q. So that ended that investigation of the road and its condition, did it?

A. Entirely.

Q. I will ask you what notice you gave Mr. Crawford of that
fact.
1116 A. Oh, I don't remember, but I undoubtedly told him
those facts.

Q. Told him what facts?

A. That people would not take an interest in it and so forth, and we could not buy the property—could not take an interest in it.

Q. Then after that your attention was again called to the road by officers of the First National Bank—by Mr. Nickerson and Mr. Gage—was it?

A. Yes, sir.

Q. They wanted you to take hold of the enterprise to save their second lien that they had on the securities?

A. They wanted me to take hold of it to save that second lien if I could see it in any way that I thought justified me in taking hold.

Q. Then that is the way in which you came to have your attention called to that matter, and that was the beginning of what afterwards resulted in your purchase of the bonds of Drexel, Morgan & Co., was it?

A. Yes, sir.

Q. Now at that time—that is, at the time that these gentlemen of the First National Bank called your attention to it—I will ask you where these bonds were, as you understood?

A. As I understood, the bonds were with Drexel, Morgan & Co.

Q. What do you know about their having been advertised for sale under the pledge?

A. I was told they had been, but I knew nothing personally.

Q. That was part of the information you got from those gentlemen, was it?

A. Yes, sir; I had got information that some action had got to be taken quick or the thing would be ended.

1117 Q. What do you mean by that?

A. I mean to say Drexel, Morgan & Co. would not hold the shares any longer, and had a right to sell them out when they chose, and they had determined to sell; unless some inducement could be made to change their minds it would be done very quickly.

Q. And they would sell the bonds for their loan?

A. Sell everything they had.

Q. Leaving the First National Bank out?

A. Leaving the First National Bank out as far as they were concerned.

Q. So, Mr. Porter, you were first attracted, or first began to make this negotiation for the purchase of these bonds, having in view as your prime object the security, or saving the First National Bank's indebtedness?

A. Yes, sir.

Q. What did you do then?

A. I wrote a letter to Drexel, Morgan & Co. in connection with Mr. Nickerson.

Q. I will ask you at that time if you had any conversation with Mr. Crawford about the extension of time of Drexel, Morgan & Co.?

A. I have an indistinct recollection that I perhaps suggested to Mr. Crawford that the only way I could do — to help him to get an extension of time, so that we could make some negotiations that we hoped to make; that I would be very glad to help him if I could, both in his interest and in the interest of the bank, and in the interest of preventing a loss.

Q. What do you know about Mr. Crawford's prospects at that time of negotiating the bonds with some parties in the East?

1118 A. I had heard that Mr. Crawford was in negotiation with some parties in the East. I could not tell you who they were. Mr. Crawford was very hopeful that he should succeed.

Q. He gave you to understand he was expecting to negotiate and sell the bonds?

A. He gave me to understand—I think Mr. Crawford was more sanguine than I was that he would succeed, and I sincerely hoped that he would.

Q. So that it was in that way you came to make your proposition to Drexel, Morgan & Co.?

A. Entirely.

Q. To buy those bonds?

A. Entirely.

Q. I will ask you now if at the time you made that contract with Drexel, Morgan & Co. in the month of June, 1884, you had any intimation of any fraud or any illegality either in the execution of the mortgage or the issue of the bonds that were then pledged to Drexel, Morgan & Co.?

A. None whatever.

Q. Had you ever heard anybody say anything about that?

A. Never; the thought did not occur to my mind.

1119 Q. I will ask you if, up to that time, you had ever heard any claim being made as to any illegality in any contract Mr. Crawford had with the railroad company?

A. Never.

Q. Or any fraud in it?

A. Never.

Q. So that at the time you entered into that contract with Drexel, Morgan & Co. you went in in good faith, investing your money in what you believed to be genuine *bona fide* and valid securities?

A. I went in in perfect faith and under the business assumption that Drexel, Morgan & Co. were business men, who knew what they did and made their examinations, and any titles that they would take it would be safe for me to take without further investigation.

Q. And that is the reason you made no special investigation, is it?

A. I should not think of investigation, coming through that concern.

Q. You took it for granted that these securities, coming through their hands in that way, they having loaned $350,000 to $400,000 on them, you took it for granted the title in the bonds was good?

A. I did.

Q. And that the bonds were valid and legal?

A. And that they were too good business men when they made the original advances to the original construction not to look out for that; that they looked out for that for themselves, and when they did that they looked out for that for me.

Q. You say that [when] you went in and bought these bonds your primary object was to protect the First National Bank?

A. Yes.

1120 Q. I will ask you, when you had your talk or came to an understanding with Mr. Nickerson and Mr. Gage about protecting their interest, whether that was done before you made your contract with Drexel, Morgan & Co. or afterwards.

A. My contract with them with reference to Drexel, Morgan & Co. left us the owners of the bonds, and they were trusting us, not we them.

Q. So they were relying on you taking care of their interest?

A. They were relying on us; yes.

Q. When you bought these bonds of Drexel, Morgan & Co. it was with the understanding, not that there was any special contract entered into, but that there was a general understanding between you and Mr. Nickerson that the interest of the bank should be protected by your purchase?

A. Entirely protected, in good, commercial honor.

Q. But the manner in which it was to be protected had not been agreed upon or settled on?

A. No, sir; they had to take their chances that they could agree with us.

Q. You have seen the assignment of Crawford to the bank that was introduced in evidence the other day?

A. I think they sent me a copy of it.

Q. I will ask you if that assignment of Mr. Crawford to the bank was made at the same time that contract was entered into known as the syndicate contract?

A. I think so; I think it was about that time.

Q. You had notice of the assignment?

A. Yes; immediately.

Q. And you endorsed your notice right on the contract, did you not?

1121 A. I don't remember, but it would be the natural proceeding; I don't remember the transaction; it would be the natural proceeding, and I suppose they would ask it of me and I did it.

Q. It was in that way by the assignment of Crawford's interest in the contract—it was in that way you were proposing to protect the interest of the First National Bank?

A. Yes, sir.

Q. To take care of their interests?

A. Yes, sir.

Q. Under your contract with Drexel, Morgan & Co., Mr. Crawford had sixty days from the 20th of June in which to pay their indebtedness; that is correct, is it?

A. Well, I should have to look at the contract to see.

Q. He had sixty days from the 20th of June; that is correct, is it?

A. I believe so without the papers before me. (Witness refers to paper.) If it remained unpaid after sixty days from the 20th of June, 1884, that is so; yes.

Q. Sixty days from that time the bonds became yours absolutely?

Solicitor for defendants objected to any construction of the contract by the witness.

A. They belonged to me absolutely on my paying the money which I had agreed to pay; I was indebted for them and they were entitled to the money.

Q. When did you pay for the bonds?

A. January 15, the last day provided in the contract.

Q. How much did you pay Drexel, Morgan & Co.?

A. I should have to think. I think it was three hundred and
ninety-two thousand and some dollars; whatever my record
1122 of that date with Drexel, Morgan & Co. says—$392,363.24.

Q. When was that paid?

A. It was remitted from Chicago to them January 12, 1885, to New York by drafts.

Q. At the time you remitted that money and paid for those bonds, I will ask you if you had any knowledge or intimation from any source or any quarter that the bonds were invalid or fraudulent or illegal?

A. I had not, nor in any way disputed——

Q. Had you ever up to that time heard any imputation cast on their validity?

A. I had neither heard nor seen anything indicating anything but that they were valid. Before that time I had seen data to make me believe that they were valid.

Q. You believed when you were paying that money to Drexel, Morgan & Co. you were buying valid securities?

A. Entirely.

Q. And that you were getting a *bona fide* title?

A. Entirely.

Q. I will ask you what value you considered the stock, Mr. Porter?

A. Nothing except to keep it out of mischief-makers' hands who might unnecessarily delay a foreclosure.

Q. You attached no value at all to the stock?

A. No value.

Q. I will ask you, Mr. Porter, to state whether, as a railroad man, you considered the railroad property in the condition you found it when you examined it as equal to the face value of these bonds?

A. I would not have taken it, as I stated in my evidence the other day—I would not have taken it at the amount due Drexel, Morgan & Co. except with the idea that if I added money and added improvements it would be a nucleus to make a valuable road later; make part of a valuable road later.

1123 Q. What did you consider the value of the road at that
time in the condition it was then in, without any reference
to its extension, but in the condition it was then in; without any
more new money, and without any reference to its extension, but in
the condition you found it when you went over it?

A. I did not look at it; I considered it as a road that would not pay operating expenses. It had value in material to be torn up if the laws of Indiana allowed it to be torn up, which I do not know, but as the road was it would not pay operating expenses.

Q. I will ask you if the road at that time was in your judgment worth anything near the amount of its probable cost?

Solicitor for defendants objected to the question as not proper cross-examination.

Q. I mean its cost of construction.

Solicitor for defendants objected to the question as not proper cross-examination.

A. I didn't know what its cost of construction was; it was not worth—no man could have constructed that road as it was constructed for less than several times the money that I considered it worth.

Solicitor for defendants objected to the answer as not responsive to the question.

A. I am putting this now on the basis of it as it existed.

Q. Did you make any estimate as to what it actually cost?

A. No; I did not consider it cut any figure in what I was
1124 looking at—what it cost.

Q. What inquiry did you make, Mr. Porter, about the debts of the railroad company?

A. I don't think I made any; I didn't see that they affected me or the plan.

Q. And that is the reason you made no inquiry about them?

A. That is the reason; and I did not want to be drawn into a contest. What were ahead of the bonds would have to be paid anyway, and what were not ahead of the bonds would not be paid; and consequently I was not interested in it, and I wanted to keep out of it. I did not want to be looked upon as interested in it.

Q. That December contract, Mr. Porter; you mentioned the additional things you got by making that contract, and there were two things, I believe, you did not mention—one was the cancellation of the construction contract by Henry Crawford and his surrender of any rights to additional income bonds on the road. Were those part of the consideration for the contract?

A. Those were parts of the consideration.

Q. For making that contract?

A. Yes, sir.

Q. That letter of November 13, 1884, which you wrote to Mr. Dows—you state that that was the plan which you had in mind at the time you wrote that letter?

A. Yes.

Q. But there were some changes took place subsequent to that time?

A. Yes, sir.

Q. The parties who at that time were supposed to be going into it did not go in, and others went in their place, didn't they?

1125 A. I don't remember how that is; I did not have any particular parties in my mind; I only knew that there was an atmosphere of people wanting to join me large enough to take the responsibilty.

Q. In other words, you had looked over the ground in a general way and made up your mind you could carry out the plan indicated in that letter?

A. Yes; with such modifications as the future might justify, before they were closed.

Redirect examination by Col. Cooper:

Q. I neglected to get your answer to my inquiry as to what the value of that Union Coal Company stock was.

A. That is a thing I did not know much about either; I just had an idea of the general mass, and I did not itemize that particular part of it.

Q. Do you know how much land they had?

A. I don't think they had any land at all.

Q. What did they have—that is, what physical property?

A. They had a coal shaft getting out a quantity of coal at that time, on which they paid a royalty.

Q. Do you know, in a general way, what you would say it was worth?

A. My answer is it was worth more to have it kept open for the road to get freight on than it was worth in any other way, but I bunched it all, as it were, in a basket.

Q. You would say it was not worth to exceed ten or fifteen 1126 or twenty thousand dollars, wouldn't you?

A. It is the first coal interest I ever owned, and I think I am about as ignorant of it as a man could be.

Q. I am talking now about approximate values.

A. I think, perhaps, it was worth—I thought it might be worth forty or fifty thousand dollars, but I think now I was wild.

Q. You say you had seen data to make you believe that the bonds were valid, as I understood your testimony on cross-examination—that is, of the date prior to the 25th of June?

A. No; not prior to the 25th of June; it is after that.

Q. Prior to the 26th of December?

A. Yes, sir.

Q. You had seen data?

A. Yes, sir.

Q. Have you got that data?

A. I think I have got copies of it; I will have to look and see.

Q. What papers did you get from Drexel, Morgan & Co. in response to your letter of request and remittance of January 12, 1885?

A. O, I don't know; I got a basket full of things that looked as if people had been reporting to them the condition of the property and the expenditure of money, vouchers, and all that.

Q. Have you got those yet?

A. Yes.

Q. Where are they?

A. Some of them are here, and many of them are not.

Q. I want to know what you got from Drexel, Morgan & Co.

A. I have got duplicate vouchers for $347,504 expended there of that money borrowed on the road. I have got an opinion of John C. Bullitt and Mr. Hendricks that those bonds were legally
1127 issued in Drexel, Morgan & Co.'s hands, and that they were perfectly safe in taking them.

Q. Do you know what investigation John C. Bullitt and Mr. Hendricks had made of the matter?

A. Only from these letters.

Q. You never saw those gentlemen?

A. I never saw those gentlemen.

Q. About the matter?

A. I never spoke to either of them, and that data has come into my hands since; they did not have any relation to the purchase by me at all; I was not looking to anything of that kind.

Q. Have you any information to the effect that Mr. Bullitt or Mr. Hendricks, either of them, had this record-book of the Chicago & Great Southern Railway Co. in their hands?

A. I haven't any information on the subject at all, unless it is in here, and in here (referring to Hendricks' opinion) I haven't read farther than the general winding up that the securities were good.

Q. When did you get that data?

A. I think Mr. Nickerson showed it to me after we had purchased from some correspondence we had had.

Q. After which purchase—the purchase of December 26th or ——?

A. The purchase of Drexel, Morgan & Co.

Q. I understand you to say you relied upon Drexel, Morgan & Co.?

A. I relied upon the general business question and the information Drexel, Morgan & Co. had of this, and I thought it would
1128 be useless for me to look any further.

Q. You never made any inquiry?

A. I never did; and these papers that came back with it justified me in my opinion that they had evidently been looking into it more carefully than I should anyway.

Q. And the question of the debts, as to whether they were liens on the property, did not concern you?

A. It did not concern me.

Q. As to whether there were liens ahead of the mortgage or not?

A. It concerned me to the extent, and one object of that contract was in reference to the liens that were ahead of the mortgage, but it did not concern me with reference to those that were behind it.

Q. As to liens that might be declared to be ahead of the mortgage; those concerned you?

A. Yes.

Q. What inquiry did you make about those liens?

A. None.

Q. Why?

A. Because I was willing to take the chances; there was property enough under the mortgage for the price paid to Drexel, Morgan & Co.

Q. You were to retain the balance of the purchase-price in your hands under the contract of December 26th?

A. Yes. The contract of December 26 was made on the basis of what I was willing to carry out my scheme to add to the property to perfect it, and whatever it lacked of it must be paid, and whatever it was over they might have.

Q. When it came to the contract of December 26th, in en-
1129 tering into the contract, as I understood you, you made no
further examination than you had prior to June 25th?

A. No further examination.

Q. Didn't you, as a matter of curiosity, during that interim and after the 20th of August——

A. A great many things came to my notice, and I purposely wanted to keep out of them; I didn't want to be mixed in them.

Q. You didn't want to make any other inquiry?

A. I didn't want to be mentioned in it.

Q. And you failed to make inquiry because you didn't want information?

A. Because I wanted to act in the most perfect good faith.

Q. Is that the way you act in perfect good faith, by not knowing anything?

A. The way I act in perfect good faith is by establishing a principle that is good faith, and not bother about details until they come up.

Q. So you purposely avoided looking into the financial condition of the Chicago & Great Southern Railway Company, as I understand you?

A. I did not purposely avoid it; I did not consider it worth while for me to do any work about it, and I did nothing.

Q. Didn't I understand you to say you purposely avoided it?

A. I purposely avoided the bother it would make me, that is all; not from the fear to know it, but from the fact that it didn't affect the question as I was situated.

Q. Why did you say you didn't want to know because you
1130 didn't want to be mixed up in it?

A. I didn't want to be bothered with the controversy and with people coming to me to talk about it.

Q. That was all?

A. That was all; I want to say further that I had proceeded in the foreclosure to put money enough in court; my plan was to cover the amount of all these claims and leave the court to decide over the money instead of over the property, and I didn't dream at the time that anybody would object to that.

Q. Who are the present owners of the bonds of the Chicago & Great Southern Railway Company in process of foreclosure?

A. Well, I consider myself the owner.

Q. I am not asking you what you consider; I am asking you who are the owners.

A. I am not the judge; if I cannot tell what I consider the fact, I cannot answer the question.

Q. Whose money paid for them?

A. My money paid for them originally.

Q. All of it?

A. All of it.

Q. Haven't you collected any money from the members of the syndicate?

A. No, sir; I stood right by myself and furnished the first money; collected the money afterwards.

Q. Do you mean to say that up to the 12th of January you had not collected any money?

A. I mean to say I had not collected one single iota, not a penny, up to the time of the notation of these payments on here.

Q. Your receipt to Mr. Nickerson for $150,000 is dated January 12th; is that true or false?

1131 A. I have no doubt that every notation there is true.

Q. You had collected, at least so far as Mr. Nickerson is concerned, on the 12th of January the whole of his subscription of $150,000, hadn't you?

A. If the receipt says so.

Q. What is the receipt?

Mr. **Hillard**: The receipt is dated January 12th.

Col. **Cooper**: Then it was Mr. Nickerson's money furnished part of it, didn't it?

A. I don't know whether it did or not; I may have given my check and collected of Mr. Nickerson afterwards.

Mr. **Hillard**: I will explain that; Mr. Porter made the whole check for $392,000; I purchased with Mr. Porter's individual check drafts on New York, as stated in the letter, and at the same time I walked into Mr. Nickerson's office and said: "Mr. Nickerson, Mr. Porter has used all that money to-day, and he wants your subscription, if you can pay it." He gave me a check for $150,000 and that is how it comes on the same date.

Col. **Cooper**: Had there been any other money collected before that?

A. Not one penny, to the best of my knowledge.

Q. The statement may show that.

A. The statement is correct, whatever it is.

Q. Whatever moneys had been paid up to the 12th of January, 1885, on account of the subscription by the members of the syndicate you deposited in common with your own funds, and then, upon the bank where your account is kept, you drew a check with which the drafts were purchased for Drexel, Morgan & Co.?

A. Yes; but my impression——

1132 Mr. **Hillard**: My recollection, Mr. Wing had paid his subscription; he was going away; I think he said he was going to Florida; the time for payment was January 15th; you (Mr. Porter) said if he wanted to pay it before he could; my impression is, you took his money about a week before you took — anybody else, but it was only $15,000; the statement shows exactly when everybody paid in his money.

The **Witness**: This statement I will make to cover it: I think that there was no more money used than had been paid in by that statement on the 12th of January, and I think a material proportion of that was paid to me after I had made my remittance to Drexel, Morgan & Co.

Col. **Cooper**: The other moneys that were collected after the 12th of January by you from the members of the syndicate, as noted on the syndicate subscription paper; what did you do with those moneys?

A. I kept them to refund to me the money I had paid before; I was the whole syndicate up to that time, and was lessening my interest as each man came in and subscribed.

Q. So that as each man came in you took his money and used it as your own?

A. Yes, sir; and allotted him such proportion of the investment as that made.

Q. Are there any other papers between the members of the syndicate than those which have been introduced in evidence here?

A. None, to my knowledge.

1133 Q. Were there any letters written by you to Drexel, Morgan & Co. prior to June 25th, 1884?

A. I have no recollection of any and no copies of any.

Q. Do you find none in your letter-book?

A. None in my letter-book; no.

Q. How was it with the contract signed by you and Mr. Nickerson of June 25; was that conveyed to New York by mail or by persons?

A. That I cannot answer; it was not conveyed by me, and I suppose by mail; Mr. Nickerson may have sent it in some shape; I don't know.

Q. I understand you had not personally seen any members of the firm?

A. I hadn't seen any of them at all.

Q. With whom was that negotiation, so far as Drexel, Morgan & Co. were concerned, carried on prior to the 15th of June—you or Mr. Nickerson?

A. It must have been carried on by Mr. Nickerson.

Q. Have you got the letter from Drexel, Morgan & Co. which accompanied the bonds, and the other papers relating to the title of the property?

A. Unless it is among those papers there.

Mr. **Hillard**: It is not there; but I think I know where it is.

Col. **Cooper**: Have you got a list of the papers that came back—I mean outside of the bonds and stock, the title papers?

A. I don't think so; I turned them over to Mr. Hillard. Mr. Hillard thinks he has a copy.

Q. A list of the papers?

A. Of the papers returned.

Q. I would like to have that list presented here?

A. I will have Mr. Hillard bring it in.

1134 Recross-examination by Mr. PIERCE:

Q. Among these papers you say there are — vouchers—vouchers amounting to, in the aggregate, $347,504.05?

A. Yes.

Q. What are those vouchers?

A. I never read them.

Q. You have examined them in a general way to see what they are?

A. They appear to be in a general way vouchers that they had to show that the money was expended before they would pay the money they had loaned.

Q. For the construction of the Chicago & Great Southern railroad?

A. Yes; they seemed to be duplicate vouchers, as if they had been made out in duplicate, and involving the money it was either to be paid out for expenditures made on the road, and there were vouchers for the expenditures which were made; that seems to be the purport of it, and that seemed to be the purport of the agreement.

Q. When did you get those papers?

A. They all came back with the securities.

Q. In answer to your letter of January 12 remitting the amount?

A. Yes; I asked them to send back anything they had.

Q. Including the letter of Mr. Bullitt?

A. Yes; and Hendricks.

The signature of the witness to the above deposition was waived by agreement of counsel.

1135 Solicitior for complainant offered in evidence the following letters in connection with the testimony of Mr. Porter:

"LAW OFFICES 32 SOUTH THIRD STREET,
PHILADELPHIA, *May* 19*th*, 1883.

Messrs. Drexel, Morgan & Co.

GENTLEMEN: I have received from Mr. Hendricks the supplemental mortgage to John C. New, trustee, dated April 9th, 1883, and I enclose it herewith. I also send you copies of letters of Mr. Hendricks to me, dated April 16, 1883, and May 16, 1883, in which he expresses the opinion that the consolidation between the Chicago & Great Southern Railway Co. and the C., B. & C. R. R. Co. has been legally effected, and that the supplemental mortgage, together with the original mortgage to John C. New, trustee, constitutes a valid mortgage on the first division of the road of the Chicago & Great Southern Railway Company.

I consider that the matter is now in a satifactory shape.

Mr. Hendricks' bill, which is enclosed, I consider a reasonable one under the circumstances. Mine I also enclose herewith.

Y'rs truly, JOHN C. BULLITT.

P. S.—I take it for granted you have reserved the money from Crawford to pay these bills."

Stamped: "Received May 22, 1883."

1136 "*Loan of Drexel, Morgan & Co. to Crawford.*

Copy.

INDIANAPOLIS, IND., *May* 16, 1883.

John C. Bullitt, Esq., Philadelphia, Pennsylvania.

DEAR SIR: On April 16th I wrote to you to the effect that Mr. Crawford had effected a consolidation of the C. & G. S. R'y Co. and the C., B. & C. R. R. Co. in a form that I thought legally sufficient, and that when the consolidated company should make and place on record the supplemental mortgage formerly spoken of, it, together with the original mortgage to John C. New, would constitute a valid legal mortgage on the line of road described in the instrument.

Mr. Crawford has sent this supplemental mortgage, and I herewith forward it to you. I think it sufficient for the purpose intended.

As my services in the matter seem to be now ended I take the liberty to enclose the bill of my firm for the services. This matter occupied so considerable a portion of my time in the months of December and January, besides odd occasions in the subsequent months, that I hope Messrs. D., M. & Co. may regard the bill as reasonable. I think perhaps, if you knew the amount of time that this matter actually occupied me, you would suppose the charge moderate, irrespective of the magnitude of the interests involved in it.

Yours very truly,
(Signed) A. M. HENDRICKS."

1137 "Copy.

"INDIANAPOLIS, IND., *April* 16, 1883.

"John C. Bullitt, Esq., Philadelphia, Pennsylvania.

"DEAR SIR: Your letter of 13th, relating to the Crawford business, is received. A week or so ago Crawford sent me the consolidation papers and a draft of deed of further assurance. As to the former, I thought them sufficient, and pursuant to the request of Mr. Crawford caused the articles of consolidation to be filed in the office of the secretary of state. As to the deed of further assurance, I suggested some modifications, and wrote to Mr. Crawford that, if these were made and the deed recorded and a certified copy of it sent to me, I would give it to you as my opinion that the mortgage and deed of further assurance created a legal mortgage upon the first division of the road. When I receive the copy I will write you to the effect indicated.

"Very truly, "A. W. HENDRICKS."

1138 "Drexel, Morgan & Co., Wall St., corner Broad, New York.

"NEW YORK, *May* 22, 1883.

"John C. Bullitt, Esq., 32 South 3rd St., Philadelphia, Pa.

"DEAR SIR: We to-day received your favor of 19th inst., enclosing copies of letters of Mr. Hendricks, also bills of Mr. Hendricks and your good self.

"Your letter also covered the supplemental mortgage to John C. New, trustee. Kindly say, if it is in order, why you do not have it recorded and lodged with the trustee.

"Yours truly, —— ——."

1139 Law offices 32 South Third street.

CHICAGO & GREAT SOUTHERN RAILWAY CO.,
PHILADELPHIA, *Jan.* 1*st*, 1883.

Messrs. Drexel, Morgan & Co.

GENTLEMEN: As the result of my correspondence with A. W. Hendrick, Esq., of Indianapolis, for his opinion in regard to the validity of the mortgage on the northern division of the Chicago & Great Southern Railway Co., for $2,000,000, I make this report.

The small map enclosed, *which* while not drawn upon a scale, will give you a general idea of the status of the mortgage and the construction of the road.

The mortgage describes the northern division of the Chicago & Great Southern Railway Company as extending from Brazil, in Clay Co., through the Co's of Parke, Fountain, Warren, Benton, Newton, and Jasper, to its junction with the Louisville & Chicago Railway Co. The mortgage does not cover any part of the line constructed south of Attica, as the title to that part of the line is vested in the Chicago & Block Coal Co. In Mr. Hendricks' opinion the Chicago & Great Southern Railway Co. does not possess the power to construct its line in Jasper county, but as the Chicago & Block Coal Co. has the power to locate part of its line in Jasper county, a 1140 construction between the Chicago & Block Coal Co. and the Chicago & Great Southern Railway Co., and the execution of a deed of assurance to the trustee of the mortgage by the consolidated company will put the whole line of road from the junction with the Louisville, New Albany & Chicago Railway Co., in Jasper county, to Brazil, in Clay county, under the lien of the mortgage. When this has been done, should no further progress be made in the completion of the line—

The length of road with track laid will be..........	49.8	miles.
The length of road with no track laid will be........	28.54	"
	78.34	miles.

In the present status of the Chicago and Great Southern Railway Company, the mortgage covers road, with track laid, 28.4 miles. My information in regard to length of road and track laid is derived from a letter from Mr. Roswell Miller to Mr. Hendricks.

The right of way paid and unpaid for, acquired, and to be acquired by the Chicago & Great Southern Railway Co., has been examined by Mr. Roswell Miller, who has already, I believe, made a statement to you on this subject. I send you, however, a copy of his statement, with three maps, explanatory of the examination made by him on this subject.

The judgments against the Chicago & Great Southern Railway Co. appearing unsatisfied of record on the searches obtained, 1141 amount to $2,840.95. Two of these, amounting to $2,567.90, Mr. Crawford states, have been paid. On the certificate of search from Benton county is endorsed a statement that one of these —a judg't for $2,005.90—has been paid. The remaining judgment is a right of way claim when an appeal is pending.

The only mortgage on the searches produced against the Chicago & Great Southern Railway Co. is the mortgage to John C. New, trustee, for $2,000,000.

On the searches produced the only suit pending is the one relative to the right of-way claim already referred to, but I do not find any searches for suits in Jasper or Newton Co. Mr. Crawford states that there are no suits pending in either of these counties, and that the searches produced show everything in the way of suits, judgments, & mortgages against the Chicago & Great Southern Railway Co.

In regard to the coal lands and contracts no information has been furnished upon which any opinion can be given.

Mr. Hendricks thinks it safe to assume that the foreclosure proceedings and sale under which the Chicago & Block Coal Company was organized and valid. The searches show this Co. to be free from suits, judgments, and mortgages against it, except a judgment in Clay county for costs, $9.55, and the railroad tax in certain townships of Fountain Co. amounting to $168.28.

1142 I understand that the arrangements with Messrs. McCormick & Dull bind them to transfer the securities of the Block Coal Co. so soon as the money is paid them under the contract. Upon this being done a consolidation can then be effected between the Chicago & Great Southern Railway Co. and the Block Coal Company, and then the right to complete the line from Fair Oaks Junction to Brazil will be vested in the Chicago & Great Southern Railway Co., and by proper conveyancing the lien of the mortgage to John C. New, trustee, can be extended to the whole line.

Mr. Crawford requests me to speak of the apparent defects as to the right of way. I do not suppose they will present any serious difficulty. It may require some attention to have them perfected, but they are not more serious than is found in pretty much all railroad construction.

Yours truly,

JOHN C. BULLITT.

I have handed to Mr. Crawford the original and other papers which have come from him.

1143 **Thomas F. Withrow**, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. **Cooper**, and testified as follows:

Q. State your name, age, occupation, and residence.

A. Thomas F. Withrow; lawyer; Chicago.

Q. Do you know Henry H. Porter?

A. Yes.

Q. Do you know Samuel M. Nickerson and Lyman J. Gage, or either of them?

A. I know both of them.

Q. Without stating anything that occurred between you and your clients, I will ask you the question as to whether, prior to the 26th of December, 1884, last year, you were ever asked to look into the affairs of the Chicago and Great Southern Railway Company as to titles, and so forth?

A. I was not asked to look into their affairs with regard to titles; I had been consulted.

Q. Had you been consulted prior——

A. I had been consulted in regard to matters connected with that company, but I never investigated the title.

Q. That is, prior to the 26th of December, 1884?

A. I never have.

Q. I mean you were consulted prior to the 26th of December, 1884, last year?

A. I could not fix the date that I had been consulted.

Q. Nearly a year ago?

1144 A. Well, I could not say certain as to the date, but I had been consulted by Mr. Porter in regard to his affairs connected with that company frequently since he became interested in the matter. I cannot fix the date.

Q. Can you remember how your consultations with him began with reference to a litigation that commenced down in Indiana along in March last—February and March?

A. I cannot remember dates, for nothing occurred to make me charge my mind with the dates. I cannot remember the consultation I had with Mr. Porter.

Q. Did you ever see the record-book of the Chicago and Great Southern Railway Company?

A. No, sir.

Q. Did you ever see Mr. Crawford's construction contract.

A. No, sir.

Q. You never saw the construction contract between Mr. Crawford and the company?

A. I never saw any contract made by Mr. Crawford as an officer of that company.

Q. Not as an officer of the company?

A. I mean contracts with the company.

Q. You never saw any?

A. No, sir.

Q. I will ask you, with reference to fixing the date, as to whether you conferred with Mr. Spooner, now Senator Spooner, of Wisconsin, with reference to a contract which Mr. Porter, on behalf of himself and his associates, was thinking of entering into with Crawford?

A. I have had conversations with Mr. Spooner about a contract, but not before it was entered into.

Q. Not before?

A. No, sir.

1145 Q. Here is a copy of a contract that has been introduced in evidence marked "Exhibit E."

A. Mr. Spooner did not exhibit to me a copy of the contract as the subject of our conversation; the conversation was general as to some questions of law that arose with reference to the contract. He did not exhibit the contract to me at all. I don't know that he had it with him.

Q. Had you seen that contract?

A. At the time that I had these conversations with him?

Q. Yes.

A. The paper which you show me, "Exhibit E," seems to be a duplicate of a paper which was exhibited to me by Mr. Porter a few days before I had the conversation with Mr. Spooner. I understood at the time that it was exhibited to me by Mr. Porter; that it had been executed between the parties, and the conversation, of course, with Mr. Spooner was after that time.

Q. How long before this conversation with Mr. Porter, in which he exhibited a duplicate of this contract, or a copy thereof, had you been in consultation with Mr. Porter about the affairs of the Chicago and Great Southern Railway Company?

A. This conversation that I allude to was the first one I have any recollection of with Mr. Spooner, and that was some time last summer.

Q. With Mr. Porter, I mean.

A. Let me finish my answer—some time last summer. The interview with Mr. Porter in which he exhibited the paper you 1146 refer to to me was a few days before that conversation with Mr. Spooner. Now, I had had conversations with Mr. Porter before that time, but how long before it would be impossible for me to say—not, however, in regard to this contract, but conversation in regard to legal questions that arose in the law of corporations as affecting that property.

Cross-examination waived.

The signature of witness to above deposition was waived by agreement of counsel.

Robert Law, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. Cooper, and testified as follows:

Q. State your name, occupation, and residence.

A. My name is Robert Law; mostly in the coal trade; Chicago.

Q. Do you know Henry H. Porter?

A. Yes, sir.

Q. How long have you known him?

A. Twenty or thirty years.

Q. Did you ever have any business with him?

A. Yes, sir.

Q. Outside of selling him coal?

A. Yes.

Q. What business, in a general way? I don't want you to go into details.

A. Some operations in railroads to some extent.

Q. Did you ever have anything to do with him in connection with the Chicago and Great Southern Railway Company?

A. Yes, sir.

1147 Q. When did you first know about that railroad—about what time?

A. About the time I subscribed.

Q. Was that before or after the holidays last year?

A. I don't know the date; I think at the date subscribed by me. The execution will show it.

Q. How did you come to take an interest in it? Was it at Mr. Porter's instance, or did you hear about it and request Mr. Porter to allow you to come in?

A. Mr. Porter was going into this operation and suggested it to me, and I had had some little deals with him before that were satisfactory, and I told him I would take a little corner in this.

Q. Did he bring the matter to your attention first?

A. I think so.

Q. How long before you actually subscribed?

A. I think not over—I would think not to exceed a week or two.

Q. What did he tell you about the matter—that is, about the property and what you were going to buy, and so forth?

A. My impression is that he had bought the bonds, I think, of the company, and the suggestion was made about completing it, ballasting it, and I think a resolution was made to continue it down to Brazil—finish it or extend it.

Q. Whom did he say he bought the bonds of?

A. I don't remember that statement, but I think of Drexel, Morgan & Co.

Q. Did he show you this agreement marked "Exhibit E?"

A. No, sir.

Q. Did you never see it before?

1148 A. I don't think I did; *I did;* I may have, but I don't remember. I will not be sure, but my impression is I don't think I did see it.

Q. Did Mr. Porter show you any prospectus of the road printed?

A. I think not.

Q. Just state, Mr. Law, the substance of what he said to you.

A. He came to me and said—I think he said he had bought the bonds of the company, and wanted to know if I wanted to take a little corner in it. I told him I would, and he had a paper in his pocket. He pulled it out, and I subscribed my name to it.

Q. How much did he tell you the bonds had cost—the purchase price of the bonds?

A. I don't know that now, but my impression is it was less than half, probably, of what they were hypothecated for. I may be wrong about that, but I think that was it.

Q. Do you remember anything about, in round numbers—about how much they had been hypothecated for?

A. Well, between four and six hundred thousand dollars, I think.

Q. Between four and six hundred [thousand] dollars?

A. I think so.

Q. And he had bought them for less than half of the amount?

A. I think that was the result. I would not be sure what he did pay for them; I don't remember. I know it was a good deal less than the face of them.

Q. The face of them, I will tell you, was $1,200,000. Now, how with reference to the face of them?

A. Less than $1,200,000—less than the face of the bonds.

1149 Q. How much less?

A. Well, I think it was about half.

Q. That would be about $600,000?

A. That is my impression; yes.

Q. And he wanted to raise that much money—that is, he wanted to know if you wanted to come in and furnish a portion of the money?

A. No; he had bought them then.

Q. How was it about his letting you in on the ground floor? Were you to have your interest on the same basis that he had bought his interest, or bought the entire property?

A. At whatever he had bought them for. I think he was in possession of them at that time; and I understood I came in on the basis of what he bought them for.

Q. Did he tell you who else were in the deal with him?

A. I think probably there was one or two before; I think Mr. Nickerson, and I think Mr. Seibert, of New York; I think Mr. Lawrence.

Q. E. F. Lawrence?

A. This Mr. Lawrence here.

Q. You became interested in the bonds at the time your subscription was made?

A. Yes, sir.

Q. How much was the amount of your interest in the syndicate?

A. I think I only took 20,000.

Q. $20,000 you took?

A. Yes, sir.

Q. He told you, as I understand you, that his purpose was to extend the road south?

A. The intention was to ballast it up and make a first-class road of it, and then extend it down south.

1150 Q. Where to? How far south?

A. Well, the first limit was Brazil, probably; but what the arrangement was afterwards I don't know.

Q. Did he tell you about extending it northward from its northern terminus?

A. No; I didn't hear anything of that kind contemplated at that time.

Q. Did you know Mr. Henry Crawford was interested in the road?

A. Now?

Q. Did you know then?

A. No; I did not.

Q. Did you know Mr. Henry Crawford personally?

A. Oh, very well.

Q. You had known him for a good many years?

A. Yes, sir.

Q. You did not know at the time you subscribed that Henry Crawford had any interest in the matter?

A. No.

Q. Then it must certainly be true that you never had seen this syndicate agreement?

A. I don't think I did.

Q. Your interest in the securities is the same now as it was when you paid your money?

A. Yes.

Q. There are $1,200,000 of bonds here, I will tell you; you are interested, then, in those bonds, as I understand it?

A. Yes, sir.

Q. Did you know at the time you made this subscription that the road was in the hands of a receiver?

A. No; I did not.

Q. You did not know that?

A. No; I made no inquiry; I simply subscribed and paid my money.

1151 Q. You had been in former deals with Mr. Porter and made some money out of them. When he asked you to go into this you said he could put you down for $20,000 and went into it; that is practically it, isn't it?

A. I subscribed $20,000 and paid the money.

Cross-examination by Mr. PIERCE:

Q. Along about the holidays you say Mr. Porter came to you and told you he had purchased the bonds of the Chicago and Great Southern road?

A. It was a few days, it might have been a week or two, before I subscribed.

Q. Did he tell you how many bonds he had bought?

A. All of them he told me.

Q. All the bonds on the road?

A. Yes, sir.

Q. And he wanted you to take an interest with him?

A. Well, he didn't want me; he said if I wanted to come in I might. I don't know that he tried to coax me; it was voluntary on my part.

Q. He told you if you wanted to come in you could come in and take an interest with him?

A. Yes, sir.

Q. So you subscribed $20,000?

A. Yes, sir.

Q. At that time you say you had no knowledge of Mr. Crawford having any interest in the bonds?

A. I have no recollection of knowing a thing about it.

Q. Mr. Porter told you that he had bought those bonds from Drexel, Morgan & Co., did he?

1152 A. I think that is the firm he told me he had bought them from.

Q. And that he had bought them, your recollection is, at about half their face value?

A. I think so; perhaps it might have been less than that; I cannot fix the amount exactly.

Q. You knew very little about the matter, except as you gained your information from Mr. Porter?

A. I had no other means of knowing anything.

Q. You had no other means of getting information about the matter?

A. No, sir.

Q. And as a matter of fact you had no other information except what you got from Mr. Porter at the time he talked with you?

A. None whatever.

Q. You had not heard at that time that there was any infirmity or anything illegal in the issue of the bonds or the mortgage by which they were secured?

A. I had no knowledge of anything.

Q. But you invested in good faith, believing you were buying genuine securities, did you?

A. Yes, sir.

Q. Did you learn from Mr. Porter or anybody else that Mr. Crawford had any interest in any way, shape, or form in this matter?

A. At the time I subscribed?

Q. Yes.

A. I didn't know that he had any.

Q. You didn't know that he had any interest of any kind or character?

A. No; in fact I was led to believe from the conversation that he had none.

1153 Q. And that Mr. Porter was the only party that was interested in the matter?

A. That he owned everything; all the right and title and had perfect title to them.

Redirect examination by Col. COOPER:

Q. You say you were led to believe that Mr. Crawford had not any interest?

A. Yes, sir.

Q. I understood you to say on your direct examination, Mr. Law, that you didn't know that Mr. Crawford had ever been connected with the matter at all.

A. Oh, I knew that he built the road.

Q. You knew that?

A. Yes, sir; you misunderstood me there; I knew that he constructed the road in the first place.

Q. How long had you known about that—about Crawford being engaged in building the road?

A. Oh, I think I knew it when he first started it, almost.

Q. Did Mr. Porter ever apply to you to help him prior to the time that Mr. Crawford did?

A. No, sir.

Q. If you knew about the time he first started it you must have known way back as far as 1882 or 1881.

A. I could not fix the date, but I know about the time he commenced to build it.

Q. Had you ever been over the road when you took an interest in these securities?

A. No, sir.

Q. Did you know Mr. Crawford had ever owned the securities at the time you made the subscription with Mr. Porter?

A. The bonds?

1154 Q. Yes.

A. Yes; I knew that he owned them at one time.

Q. You knew he owned them at one time?

A. Not perfectly.

Q. I mean had you information that he owned them?

A. Yes; I had information that he issued the bonds himself.

Q. That he issued the bonds himself; is that what I understand you?

A. Yes.

Q. Did you know what he had done with the bonds?

A. Well, I understood that he hypothecated them and borrowed money on them from Drexel, Morgan & Co.

Q. Did you understand that at the time you made the subscription to the syndicate contract?

A. Understand what?

Q. That Crawford had hypothecated the bonds with Drexel, Morgan & Co.?

A. Yes, sir.

Q. You understood that at that time?

A. Yes, sir.

Q. How did you understand Mr. Porter had got them?

A. Bought them from those parties.

Q. From Drexel, Morgan & Co.?

A. I think that is the name of the firm.

Q. You stated it might have been a week or two after you first talked with Mr. Porter that you made the subscription; now in that interval did you talk with Mr. Crawford about the matter—Henry Crawford?

A. No, sir.

Q. You did not see Crawford?

A. I saw him, but I never spoke to him on the subject.

Q. And, as I understand you, you understood at that time that Mr. Crawford had himself built this road and had issued 1155 these bonds?

A. Yes.

Mr. Pierce: You said, in answer to a question of Col. Cooper's, that you understood Mr. Crawford had issued the bonds; what do you mean by that?

A. Well, I was under the impression that in building the road he had issued the bonds and hypothecated them to raise money on them.

Q. That is, that the bonds had been issued to him, you mean, and that he had hypothecated them?

A. Yes, sir.

Col. Cooper: Whom did you understand had issued the bonds to Crawford?

A. Well, positively I don't know, in fact, who did issue them to him.

Q. Who did you understand to have issued the bonds to him?

A. Well, I suppose as fast as he constructed the road the bonds were issued to him, but by whom I don't know; I don't know what the charter was. I understood the bonds were given to him for constructing the road, and who gave them to him I don't know.

Q. Did you know who had control of the road—of the corporation?

A. No.

Q. Had you been informed about that?

A. No.

Q. What was your understanding as to who had control of the corporation? That is, I understand you to say that you understood that Crawford was building the railroad, and was getting bonds for building the railroad. Now, then, whom did you understand to have control of the corporation in the matter—Crawford?

A. Crawford, I suppose.

1156 Mr. Pierce: Do you mean to say by that that you understood Mr. Crawford was controlling the corporation—controlling the railroad company?

A. I supposed he was the principal; at least I understood so, having possession of the bonds and hypothecating them, I supposed he was the principal all the way through in this matter.

The signature of the witness to above deposition was waived by agreement of counsel.

1157 E. F. Lawrence, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. Cooper, and testified as follows:

Q. State your name, occupation, and residence.

A. Edward F. Lawrence; residence, Chicago; I am in no active business.

Q. What relations do you sustain to the Chicago & Great Southern Railway Company?

A. I hardly know myself without looking up the record to see.

Q. As near as you can get at it, Mr. Lawrence.

A. I believe I am president of it.

Q. You believe you are president of it?

A. I think so.

Q. Have your duties since you have become president been such as to make active business for you?

A. Well, they have not been very onerous.

Q. How long have you been president?

A. I could not state; I could not give you the date.

Q. When did you become connected with the company?

A. Well, I could not give you that date.

Q. When did you first hear about it?

A. About the Great Southern Road?

Q. Yes.

A. I think it will be two years in February since I first knew there was such a road.

Q. How did you find out about the road?

A. Well, I cannot tell you that; I don't know; two or three parties might have spoken to me about it—either of two or three, rather.

1158 Q. State who?

A. Either Mr. Porter, Mr. Nickerson, or Mr. Gage; I think it was one of the three.

Q. I will ask you whether you are a director of the First National Bank?

A. I am.

Q. It was through your connection with the bank that you first heard about the Chicago & Great Southern road, wasn't it?

A. Well, you might say it came in that way; yes.

Q. When did you first become interested in the road?

A. I cannot give you that date without referring.

Q. You subscribed to a document that Mr. Porter had?

A. Yes; I believe I did.

Q. That was a document, was it not, wherein persons, among other things, subscribed to the purchase of the bonds and stock of the road?

A. That is as I understand it; that is as I recollect it.

Q. How long before you actually made your subscription did you first contemplate going into the matter?

A. I could not give you the dates.

Q. About how long?

A. I should say two or three months, perhaps, it might have been.

Q. Two or three months?

A. It was all talk prior to that. I don't remember when I was first spoken to about it.

Q. With whom was your talk?

A. The first talk, do you mean, or all the way through?

Q. Your first talk about taking an interest in it.

A. I forget whether Mr. Nickerson or Mr. Porter spoke to
1159 me about it first; I don't remember which one.

Q. You think that was two or three months before you actually made your subscription?

A. That is my recollection of it. I don't know as it was so long; it might not have been over two or three weeks.

Q. Are you able to state the information you got at the different conversations you had up to the time you actually made your subscription as to what information you got about the road?

A. I haven't any recollection what it was; I had faith enough in Mr. Porter to put $5,000 in there, and I didn't make much further inquiry or talk much about it.

Q. Did you or not hear from Mr. Porter any account of the road—what it was, where it commenced, and where it ended, and what the securities were that you were going to buy; what proportion in value they bore to the whole securities that represented the property of the company?

A. Well, I would not pretend to state anything concerning conversations and details that occurred between me and Mr. Porter if I did not really remember.

Q. I don't ask for details?

A. I know there was talk about there being some bonds issued on this road, and, by my putting in so much money, I would be interested to a certain extent *to* so many bonds. Since I heard you talking with Mr. Law, I think it was one million two hundred thousand dollars of bonds that was referred to.

Q. Did Mr. Porter show you this agreement between him-
1160 self, as representing himself and his associates and Mr. Craw-
ford, marked Exhibit E, prior to the time you subscribed,
that was in writing at that time, subsequently printed?

A. I saw a contract prior to this being signed which this may be a copy of.

Q. Look it over and see.

A. There might have been some changes after I saw it; I did not see it probably, for I don't know how many days. Somebody showed it to me before I signed it; I don't know when it was signed.

Q. Mr. Porter showed it to you?

A. I don't remember whether it was Mr. Portor; it was in the bank. Somebody showed it to me; I don't remember whether it was he.

Q. Some official of the bank?

A. It was not given to me by an official of the bank as an official; it was either Mr. Porter or Mr. Nickerson. I have had more talk with them about it than any one else.

Q. When you made the subscription did you know how much in amount was to be raised?

A. No; I did not exactly.

Q. Did you know approximately?

A. Well, I don't know as I knew approximately even. I would not pretend to say now; I presume I knew at the time, but it has gone from my mind, and I don't remember about it now.

Q. Did you know at the time you went into the matter that the bank was to get an assignment of whatever interest Crawford had in that contract last referred to?

A. There was some talk about it; what it was to get exactly I don't know. I presume it was all gone over, and the under-
1161 standing was that the bank was to have something; I don't remember.

Q. You are interested now in those bonds to the extent of $5,000?

A. Yes, sir.

Q. Did you know anything about the history of those bonds?

A. Nothing except what I was told.

Q. What you were told by Mr. Nickerson and Mr. Porter?

A. Yes, sir.

Q. What were you told about the history of the bonds?

A. I was told that they were hypothecated with Drexel, Morgan & Co., but I don't know by whom nor for how much; I don't remember that.

Q. Did you know who built the road?

A. I was told Mr. Crawford built it.

Q. You had known that for some time, had you not; that Mr. Crawford was engaged in building that road; I mean somewhere prior to——

A. I knew it a little while prior to my having a subscription; I could not fix the dates.

Q. Did you know whether Mr. Crawford had originally been the owner of these bonds?

A. I did not.

Q. You did not know that?

A. No, sir.

Q. You did not know who owned them?

A. I did not know who owned them; I did not know how they got into Drexel, Morgan & Co.'s hands.

Q. Did you know who was in charge of the road; who was the controlling spirit in the road, in the company—I mean at or about the time this contract was entered into? At or prior to the time
1162 of the contract of December 26th, did you know who was the controlling spirit in that company?

A. What is the date of that contract?

Q. The 26th of December, 1884.

A. My recollection is that a man by the name of Shumway was receiver; I am not sure. Am I wrong about dates; was he receiver at that time?

Q. Yes.

A. I supposed he was.

Q. Who controlled the organization; who owned a majority of the stock—did you understand?

A. I have forgotten, if I knew.

Q. Who was president of the company—did you know?

A. I don't know that even.

Q. Did you know who the directors were?

A. No; I don't know the directors; at least, I could not state from memory.

Q. Did you know about the building of the road or how it was built?

A. I was told Mr. Crawford had the contract.

Q. To build the road?

A. Yes, sir.

Q. As director of the company, weren't you told? Didn't you have information prior to the time this syndicate contract of December 26th was entered into that that was Mr. Crawford's road?

A. Very likely there was conversation of that kind; I would not say I had or had not.

Q. That Crawford had control of the property?

A. I would not state positively that I had or had not, but I presume it may have been so.

1163 Q. Don't you remember it was a matter of discussion in the bank, amongst the directors, as to Mr. Crawford's indebtedness to that bank, and that among his other assets was his interest in that property?

A. Well, there were a good many discussions where I did not participate—I am not particularly active in the management of the bank—there are a great many discussions that have been had and I know nothing about it. I know in a general way that Mr. Crawford was indebted to the bank, and I forget what the securities were now.

Q. Did you know, in a general way, that among other assets that Mr. Crawford had were securities representing this property—the Chicago & Great Southern Railway?

Q. You had been told so?

A. I had been told so.

Q. And your understanding, in a general way, was that Mr. Crawford also controlled the corporation?

A. Well, I don't know that I had any understanding on that point at all; I don't think I did. It would be a fair presumption that I could know it as well as anything that I didn't know positively myself.

Q. Have you got any stock of the company now?

A. I presume I had to have some; I don't remember about it, though.

Q. Have you got any certificate in your possession representing any stock of the company?

A. No; I could not tell without looking over my papers.

Q. Do you remember of having received any certificate?

A. I have forgotten about that. I believe I had some stock somewhere, but I don't know.

Q. Did you keep it?

A. I don't know that either; I would have to hunt for it.

1164 Cross-examination by Mr. **Pierce**:

Q. Now, Mr. Lawrence, Mr. Porter came to you and told you that he had bought the bonds of the Chicago & Great Southern road, did he?

A. Something of that nature; yes.

Q. Bought all the securities of the road?

A. I understood him so; that is the word he made use of, that he held all the securities of the road.

Q. Did he say whom he had bought them from?

A. I think Drexel, Morgan & Co.; that is my recollection.

Q. He was the owner of all the securities on the road?

A. That is my recollection.

Q. Did he tell you what his plans were about the road?

A. Oh, in a general way, I think, he did.

Q. And he offered you an interest with him in the outcome of the transaction?

A. Yes; that was the nature of our conversation.

Q. And without inquiring very much about it, but relying entirely on his judgment in the matter, you took $5,000?

A. That is precisely the situation.

Q. You subscribed $5,000?

A. Yes, sir.

Q. I will ask you if the possession or ownership of the bonds in any way in Mr. Porter was disturbed by that or whether you expected him to go right along as the owner of the bonds?

Solicitor for defendants objected to the question on the ground that the contract shows that.

1165 A. I expected that he would go right along and handle the bonds himself in any way his judgment dictated.

Q. You never interfered or made any suggestion?

A. Not at all.

Q. You take very little interest in the matter?

A. I take very little interest in it anyway—active interest, I mean.

Q. I will ask you if at the time you made that subscription, you ever had any information or had anything stated derogatory to the issuing of the bonds?

A. Not anything.

Q. If you heard any infirmatory or any taint attached to the mortgage or the bonds on the property?

A. Not a syllable in any shape.

Q. But you made your subscription in good faith?

A. Entirely so.

Q. Believing you were taking an interest in legitimate securities?

A. That we owned those bonds.

Redirect examination by Col. **Cooper**:

Q. You relied on Mr. Porter in the matter?

A. Entirely.

Q. To look after all those things?

A. Yes.

Q. Why did you have such confidence in Mr. Porter?

A. Because I had been associated with him more or less for the last 15 years, and thought I knew him pretty well.

Q. You knew him to be a very careful, prudent, business man?

A. I think so.

Q. A man who had had large experience in corporations?

A. Certainly.

1166 Q. And that as long as he was going into the matter, and was asking his friends to go into it, that he would with care look into all the matters of title and everything, so that your securities would be perfectly good?

A. That is just about the shape of it.

The signature of the witness was waived to the above deposition by agreement of counsel.

1167 George C. Kimball, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. Cooper, and testified as follows:

Q. State your name, occupation, and residence.

A. My name is George C. Kimball; I am receiver of the Chicago and Great Southern railway; residence, Attica, Indiana.

Q. Do you reside in Attica, Indiana?

A. Most of the time; yes.

Q. That is, in the discharge of your duties?

A. Yes; my offices are there.

Q. Where is your real residence?

A. My family are at Grand Rapids, Michigan.

Q. What connection have you with the Lake Michigan and Ohio River railroad?

A. I was elected a vice-president of it.

Q. What official position do you hold in the Chicago and Great Southern Railway Company?

A. Receiver.

Q. What else?

A. General manager.

Q. What else?

A. Really head of all departments.

Q. You are a director, are you not?

A. Yes, sir.

Q. You were present at the stockholders' meeting of Fair Oaks, were you not?

A. I was at one; yes.

Q. The one held on the 4th of May, 1885?

A. I should judge about that time.

Q. Who asked you to go down to that meeting?

1168 A. Mr. Hillard notified me of the meeting. He said I had been made a director, and I met them there.

Q. He said you had been made a director, and requested you to meet them there?

A. Yes; or else he notified me previously about that; I forget which it was. I am quite sure the notice came from Mr. Hillard about the meeting.

Q. That was the stockholders' meeting?

A. No; I think that was done when I was in here, in Chicago, one day, and then he notified me of the meeting when I was down there; that was it.

Q. That is, Mr. Hillard notified you when you were here in Chicago that you were to be a director?

A. No; oh, no; I was elected a director here in Chicago, and I think Mr. Hillard notified me at Attica relative to this meeting.

Q. Were you not present at the meeting at Fair Oaks of stockholders?

A. Yes; I say I was.

Q. And Mr. Gardner was there?

A. Yes, sir.

Q. Isn't that the first official position you held in connection with the organization outside of your receivership?

A. Yes, sir.

Q. Isn't this the true state of the thing, that you went down to, or came up to, Fair Oaks to attend the meeting——

A. No; I went down from here; I remember I was in here and went down from here.

Q. In response to whose request did you go?

A. I think Mr. Hillard notified me.

Q. To do what?

A. Notified me of the meeting.

1169 Q. What meeting?

A. Of this meeting of the stockholders at Fair Oaks.

Q. At the time you were not a director, when he notified you, were you there?

A. I don't remember whether I was or not; whether there had been a previous meeting or not.

Q. At that time wasn't the old board of directors still in office?

A. I don't remember; I think they were; I am not positive about it.

Q. You were not one of the old board of directors?

A. Not of the old board; no, sir. I don't remember whether that was the first meeting of stockholders or not.

Q. Suppose it was; just taking it for granted it was the first meeting of stockholders, and that you had not been a director before that, what did Mr. Hillard ask you to do?

A. He asked me to be there at the meeting to vote.

Q. To vote for what?

A. To vote for directors.

Q. What directors?

A. I don't remember the first names, and I could not tell to-day all of them.

Q. Did he give you a list of them?

A. I think he did.

Q. You had no stock in the company, had you?

A. Yes, sir. There was some stock in my name.

Q. What stock; how much?

A. I cannot tell the amount I think it is eight or ten shares; something like that.

Q. How did you get that?

A. Which—the stock?

Q. Yes.

A. It was transferred to me by some other parties.

Q. What other parties?

A. I could not tell.

1170 Q. Were there any negotiations that preceded the transfer of the stock to you, looking to your purchase of it?

A. No; not that I remember of.

Q. Do you remember whether there was or not?

A. I don't remember that there was.

Q. Did you have any stock in the company?

A. There was some in my name there; yes.

Q. How did it come in your name?

A. It was transferred to me by some other parties.

Q. What other parties?

A. I say I cannot tell you; I don't know.

Q. You did not pay anything for it?

A. I have not; no, sir.

Q. You did not agree to pay anything for it, did you?

A. No, sir.

Q. Cannot you remember the conversation between you and Mr. Hillard, how it came about and just what occurred?

A. No; I cannot.

Q. You cannot tell anything about it?

A. No; I cannot.

Q. Did he give you a certificate representing some shares in the corporation?

A. Yes, sir.

Q. Who did?

A. Mr. Hillard did.

Q. He is Mr. Porter's private secretary, isn't he?

A. He is: yes, sir.

Q. Did you say he wanted you to go down to Fair Oaks, or Mr. Porter wanted you to go down to Fair Oaks?

A. It was Mr. Hillard that notified me.

1171 Q. Were you taking orders from Mr. Hillard?

A. No; but I got letters from Mr. Hillard.

Q. Were you taking at that time orders from Mr. Hillard as to what you should do?

A. No; not particularly.

Q. Why was it that on notification from Mr. Hillard you went down to Fair Oaks?

A. I went down in the interest of the company who owned the stock.

Q. What did Mr. Hillard tell you as to who it was that wanted you to go down there?

A. He didn't tell me.

Q. He did not?

A. No; not to my recollection of it.

Q. Why did you go on Mr. Hillard's request or demand?

A. I thought perhaps it was a request that was made by Mr. Porter, he being his private secretary.

Q. Isn't it true that that was the sole reason you went down there?

A. For Mr. Porter?

Q. Yes.

A. Well, I don't know anybody else; I was in his interest.

Q. You were there in Mr. Porter's interest?

A. Yes; I was.

Q. You went down to that meeting?

A. I did, sir.

Q. And you think you had five or six shares of stock—a certificate?

A. Yes, sir.

Q. Where is that certificate now?

A. It is over at the office, I suppose.

Q. Whose office?

A. Mr. Porter's.

Q. What did you do with it?

A. Gave it back to Mr. Hillard.

1172 Q. Mr. Hillard gave it to you when you went down there, and when you got through with it you gave it back to Mr. Hillard?

A. Yes, sir.

Q. When did you first see the railway known as the Chicago and Great Southern railway?

A. I think it was in January, 1885; that is my impression; along about the first of January.

Q. How did you come to go down to see it?

A. I went down at the solicitation of Mr. Porter.

Q. Where were you at the time?

A. I was with the Union Pacific.

Q. Did you come here at the instance of Mr. Porter from the Union Pacific?

A. Yes; well, I met Mr. Porter at the Grand Pacific one day when I was on my way out to the Union Pacific, and he advised me to go down and look over that property some time when I had the chance.

Q. When you were at the Grand Pacific, and on your way down out to the Union Pacific, what was your official position in the Union Pacific?

A. I was special agent.

Q. What did Mr. Porter say to you?

A. He said he had bought the bonds of that property, and he wanted somebody in his interest to go there and handle that property—that it was not earning enough to pay its operating expenses—and fix up the road, and he wanted somebody who would take money and handle it that he would have confidence in.

Q. Did you leave the Grand Pacific and go to the Union Pacific, or go down on the Chicago and Great Southern?

A. I went out on the Union Pacific, sir, first, and finished 1173 my business there on that special occasion.

Q. And then came back?

A. And then came back. I went through to Boston and finished up a matter there, and to New York, and then I came around and made a trip over the road.

Q. How much of an examination did you make of the property when you went over it?

A. Well, I spent the larger part of two days examining it.

Q. You think that was in January, 1885?

A. I think so; yes, sir.

Q. What did you find the physical condition of the property to be?

A. Well, it needed a good deal of repair—a good deal of money laid out on it, on the track and bridges.

Q. How was the earthwork of the road—the bank?

A. Well, that was fair—very fair.

Q. As to width?

A. Yes; there was some poor, but the majority of it was very fair indeed.

Q. How was the grade?

A. That is what I am speaking of—the grade and the embankment.

Q. I am talking about regularity.

A. Whether up and down or not?

Q. Yes.

A. Considerable unevenness about it, but it was very fair for a road of that class.

Q. For a new road?

A. Yes, sir.

Q. What kind of ties did it have?

A. There was a mixture; there were hard-wood and soft-wood ties; the majority of them, I should say, were soft-wood ties.

1174 Q. About how much hard wood and how much soft wood?

A. Well, I should say one-third was hard wood and two-thirds soft wood; one-third was hard wood and two-thirds was hemlock and cedar—I should judge about that proportion.

Q. You have had a good deal to do with railroad construction, haven't you?

A. Considerable; yes.

Q. In this neighborhood?

A. Well, in Michigan.

Q. About what is the difference in durability, utility, and cost between oak, cedar, and hemlock ties?

A. The life of an oak tie, if it was cut on certain ground in certain seasons of the year, will last eight or nine years. Cedar ties, if the travel is not too heavy over them, if the rolling-stock is not too heavy, will last eleven or twelve years. They don't rot out then; the rail bends into them. Hemlock ties, my experience has been, four to seven years; three to six years, perhaps you might say, would be nearer.

Q. I want to ask you what the difference in price between ties of those different kinds of timber was in the early part of 1882.

Mr. PIERCE: Do you mean down there?

Col. COOPER: Yes.

A. Down there prices were about the same, I imagine, all round; whatever they would be in Chicago they would be in Michigan. In Michigan, when I was paying 14 and 15 cents for hemlock I was paying 25 for oak.

Q. How was it with cedar?

A. Cedar we don't use, because they are so rotten-hearted over there we could not use them.

1175 Q. Cedar ties are a good deal more expensive, are they?

A. Yes, sir.

Q. And oak ties are more expensive than either?

A. Yes, they would be in here; for instance, you can buy cedar ties in here for about 33 cents, and you buy oak down there in the winter for 35 cents. I am preparing now to get oak ties for another season; it was so late when I went there that I could not get oak ties on the line; the farmers were busy with their other work.

Q. How was it in the spring of 1882, if you know, about steel rails for track and iron rails as to cost?

A. Well, my recollection is—I was buying steel at that same time, and my recollection of talking with Mr. O. W. Potter is, there was about ten dollars a ton difference between iron and steel.

Q. How much of this road did you find laid with iron rails, and how much with steel rails?

A. Well, I have not a correct account of it; it is mixed in; for instance, there was a little piece of iron of one pattern, and then there would be another pattern, and there would be some steel; and I haven't from memory, although I have it in the office, just the amount.

Q. I would like to have you approximate about how much of the road is laid with steel from Fair Oaks to Yeddo.

A. Well, I don't think it would vary much from one-third steel to two-thirds iron—no; there will not be one-third, because the lower part of it is all iron, from Attica, that twenty-one miles

1176 say a little less than one-fourth is steel, I should judge.

Q. How many tons of rails, at 52 pounds to the lineal yard, are required to the mile?

A. Eighty-one and five-sevenths.

Q. Eighty-one tons and five-sevenths of a ton?

A. Yes, sir.

Q. And the difference between the two you say was about ten dollars a ton?

A. Ten or twelve dollars a ton at that time; that is my recollection. I know along about that time I was talking about building some spurs into the woods, into the pineries, and talked with Mr. Potter relative to iron rails as compared with steel.

Q. Did you find any extra work done down on the line of the road—that is, taking it as a fair railroad, and embankment and bridges, and so forth, did you find any extra work done along the line of the road?

A. Extra work completed?

Q. Yes, or extra work partly completed, outside of the ordinary building of a railroad with its sidings and turn-outs.

A. No, sir.

Q. Nothing?

A. Well, I found some side-track that was graded, but the rail was not laid on it.

Q. No; but anything extra?

A. No, sir.

Q. Have you ever seen Mr. Crawford's construction contract?

A. No, sir.

Q. I wish you would look that over; you will find it on the record-book, from pages 96 to 102; just look it over and you will see what Mr. Crawford is to do, and see whether there is anything
1177 outside of the work to be done that was done when you went down over the road in January, 1885.

(Witness reads contract in record-book.)

A. I will say before I read any further that I did find a few frogs and switches on hand and some extra wheels and axles.

Q. Have you looked over the construction contract?

A. Yes, sir.

Q. When you looked over the road in January did you find anything done on the road in a railroad sense which would be called extra to the contract that I have presented to you—that is, Henry Crawford's construction contract?

A. No; I don't think I did, except, as I say, a few little materials there for lengthening out those tracks.

Q. At the outside how much would it amount to?

A. I should say not to exceed a thousand dollars.

Cross-examination by Mr. PIERCE:

Q. You have simply looked over that contract hastily?

A. Yes, sir.

The signature of the witness to above deposition was waived by agreement of counsel.

1178 ORVILLE PECKHAM, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. State your name, occupation, and residence.

A. Orville Peckham; lawyer; Chicago.

Q. Do you know Henry H. Porter?

A. I do.

Q. Do you know Samuel M. Nickerson?

A. Yes, sir.

Q. Lyman J. Gage?

A. Yes, sir.

Q. Do you know anything about the Chicago & Great Southern Railway Company?

A. Well, I know there is such a railway; I don't know much else about it.

Q. Did you ever look into the affairs of the Chicago & Great Southern Railway Company for the First National Bank or for Mr. Porter?

A. No; I never looked into their affairs.

Q. Did you ever make any examination with reference to that railroad?

A. What do you mean by an examination? Ask me more pointedly.

Q. Did Mr. Gage or Mr. Nickerson or Mr. Porter ever ask you, as an attorney of the bank or the attorney of Mr. Porter, to look into the matter of the title of the Chicago & Great Southern Railway Company to its property, as to whether there were any liens thereon, whether there were any debts against it, or anything in relation to the property of the company being owned by the company?

1179 A. Yes; Mr. Nickerson, I think it was, asked me to ascertain whether there were any liens on the road in the various counties through which it run in Indiana, and I wrote letters down there to the county officials on that subject and got replies.

Q. Without going into the matter of what replies you got, I will ask you whether you were instructed by them to look into the matter of the title of the legality and validity of the mortgage of the company securing its bonds?

A. I think I saw the mortgage; I think I examined the mortgage, and I was shown an opinion in regard to the legality and validity of the bonds by Mr. Hendricks, of Indianapolis, and by Mr. Bullitt, of Philadelphia, but I made no independent examination.

Q. What time was that you were shown those?

A. Well, I think it was in the spring or the early summer of 1884, last year.

Q. Did your inquiries extend so far as to find out who had built the road.

A. No; I did not make any inquiries to find that out.

Q. Did you know?

A. Did I know who built the road?

Q. Yes.

A. Yes—well, I knew it from hearsay.

Q. Hearsay from whom?

A. I don't recollect, I am sure.

Q. With whom did you consult with about the railroad; who were the people you were talking with?

A. Whom was I talking with about the road?

Q. Yes.

A. Well, I talked with Mr. Nickerson, Mr. Gage, possibly and probably occasionally with Mr. Porter, and with Mr. Crawford occasionally.

Q. From your conversations with those gentlemen, did you
1180 ascertain who it was had built the road?

A. I had an understanding he had built the road.

Q. What was your understanding?

A. I understood Henry Crawford built it.

Q. Did you ever ask to see the record-book of the corporation?

A. I never did.

Q. Did you ever see this book that is now shown you (referring to record-book)?

A. Not to my knowledge or recollection.

Q. Will you look at the mortgage as shown in that record-book and say whether or not you did not see that mortgage?

A. I did not see it here; I think I saw that mortgage; I am pretty sure.

Mr. Pierce: Do you mean the original mortgage or a copy of it?

A. A copy of it, probably; but I cannot recollect how it appeared, I am sure; I cannot tell now what the provisions were that were in it; I think I recollect seeing the mortgage.

Col. Cooper: You say that was some time in the early part of 1884?

A. That is my impression; in the early part of the summer or spring perhaps, I should think, of 1884.

Q. And you were also, about the same time, as I understand you, shown letters of Baker, Hoard, & Hendricks and also of Mr. Bullitt, of Philadelphia?

A. Yes; I think that would be my recollection.

Q. Did you make any examination with reference to the indebtedness of the company?

A. Except in that inquiry for liens you know; that sort of indebtedness; that is all; no other.

1181 Q. Just what was ahead of the mortgage; for the purpose of finding out what might possibly be ahead of the mortgage?

A. I was asked on the subject of liens how that could be found out, and I said it might be a good plan to write to the county officials down on the line of that road, and I was then told to do so, and I did so, and got responses and turned them over.

Q. Who was it asked you to do this work?

A. I think it was Mr. Nickerson; I am quite certain it was.

Q. About what time in the year 1884 did he make that request of you?

A. Well, I could not say about that; I am not able to tell you.

Q. Would you say it was before the 25th of June?

A. Well, I should not be able to say whether it was before or after; about that time; there are letters here that enable me to tell something about the time.

(Witness produces letters.)

Q. Look at them and see.

(Witness refers to letters.)

A. Yes; I wrote those letters before the 25th of June.

Q. About when was it you wrote the letters down along the line of the road to the county officials?

A. About the 16th day of June.

Q. Did you make any inquiry of Henry Crawford or the company as to what the debts of the company were?

A. No; I don't think I did; I don't know whether I did or not; I don't think I did. I didn't go to him with any special view of finding out what the debts of the company were, if that is what you mean.

1182 Q. Did these gentlemen in the First National Bank direct you as to what you should substantially ascertain?

A. I think so; I think they consulted me about liens and asked me generally whether there would be a mechanics' lien or might be mechanics' liens upon that road, and I said yes, and they asked me how it could be ascertained what the liens were, and I told them what I thought; further than that I don't recollect.

Q. The information they gave you was to this effect, was it not, that there were debts against the road, against the company, and asked you whether those debts were liens or not prior to the mortgage; that was the thing you were looking after, wasn't it?

A. No; I don't think they told me that the company had any debts; I don't think they told me anything about it. I don't recollect that; my impression is they had in mind there might be liens upon that road, and they wanted me to find out if there were, and that is the only matter, I think, where I ever looked up to see what the indebtedness of the company might be or was ever asked to.

Q. Did you examine the laws of Indiana under which the railroad company was incorporated?

A. No.

Q. So far as your examination went, as I understand from your testimony generally, you simply endeavored to cover the question as to whether there were liens ahead of this mortgage or not; assuming the mortgage to be genuine and valid?

A. So far as my examination went, that is the only thing I looked into.

1183 Q. They didn't ask you to look into anything further?

A. No.

Cross-examination waived.

The signature of the witness to the above deposition was waived by agreement of counsel.

1184 Solicitor for defendants offered in evidence in connection with the deposition of Orville Peckham the following letters:

"BRAZIL, IND., *July 2nd*, 1884.

"Orville Peckham, Esq., Chicago, Ills.

"DEAR SIR: Enclosed you will find copy of mortgage given by the Chicago and Great Southern Railway Co. to Jno. C. New, trustee. We had to copy in full in order to give you a correct idea of its contents as it is of a complicated nature. This is the only lien against said R. R. Co. in this county, and there are no other notices of liens.

“Our charge for this copy and the examination is five dollars, ($5.00), which you will please be kind enough to remit.

“Respectfully, &c., MATSON & LUTHER.”

“COVINGTON, IND., *June 25th*, 1884.

“Orville Peckham, Esqr., Chicago, Ills.

“DEAR SIR: The recorder handed me your letter to answer, inquiring as to liens *vs.* Chicago & Great Southern R. R. There is a mortgage to John C. New, trustee, for two million dollars,
1185 dated Nov. 1st, 1881.

“A mortgage by the said road & Chicago & Block Coal R. R. (a continuation of the former) to John C. New, trustee, for two million dollars, dated Ap'l 9th, 1883. There is costs *vs.* said R. R. in the Fountain c't c't for $15.75 and $16.20, and judgments for $180.00 and $113.90 and $160.05. The taxes are delinquent in the townships of Logan, Shawnee, Van Buren, and Mill Creek, and towns of Attica and Veedersburgh to the am't of $970.11.

“Yours respectfully, HOMER SEWELL.

“Fee, $2.00.”

“Recorder's office, Benton county, Newton Sheetz, rec'r.

“FOWLER, IND., *Jan. 25th*, 1884.

“Mr. Orville, Peckham, Chicago.

“D'R SIR: Rec'd your letter in regard to liens, and you will find enclosed copy of both of them, as I did not understand what you had reference to about particulars, so just send copy of both of the liens.

“Very resp., NEWTON SHEETZ.

“Fee for same, $1.50.”

1186 *Contractors' Notice of Lien.*

Notice is hereby given to all whom it may concern that the undersigned, who, under a contract with the Chicago & Great Southern Railway Company, constructed all the embankments and made all the excavations on said road from a point near the town of Oxford, in Benton county, Indiana, to a point near Attica, Fountain county, Indiana, and for which said railway company now owes him the sum of fifty-seven thousand and two hundred dollars (57,200), intends to hold a lien on all that part of said road-bed so constructed by him, and the track laid thereon, to secure said debt, said part of said road being more particularly described as follows, to-wit: Beginning at a point fifteen hundred (1,500) feet south of where said railroad crosses the Lake Erie & Western railroad, in Oak Grove township, Benton county, Indiana, and running thence southward to where said railway crosses the Indianapolis grade or dirt road in the east half of the southeast quarter of section thirty, in township twenty north, of range seven (7) west, in Warren township, Warren county, Indiana.

Given under my hand this the 17th day of October, 1883.

VOLNEY Q. IRWIN.

Recorded October 20th, 1883, at 8 a. m.

1187 *Notice of Mechanics' Lien.*

To Henry Crawford, president of the "Chicago and Great Southern Railway Company," and the Chicago and Great Southern Railroad Company, and to all others whom it may concern:

Take notice that I intend to hold a lien on the real estate described as follows: Southeast of southeast quarter of section eighteen (18), township twenty-four (24) north, of range seven (7) west, of Benton county, Indiana, more accurately described [as] parts of lots seven (7) and eight (8) in Jasper N. McConnell's first addition to the town of Oxford, Benton county, Indiana; and sixty (60) feet north from the northeast corner of lot 1, block 2, in Justus' first addition to the town of Oxford, county and State aforesaid, and on the depot and platform erected by said railway company on said lots for the sum of one hundred and seventy-five dollars for work and labor done and performed on the said building and platform at the special instance and request of the said Henry Crawford, president of said railway company. The said labor and work was done and performed between the 8th day of August, 1883, and the 24th day of January, 1884, the last labor being on the 24th day of January, 1884, and within sixty days of filing this notice the sum of one hundred and seventy-five dollars, with interest from the 24th day of January, 1884, at six per cent., is now due and unpaid.

Dated this 15th of March, 1884.

H. W. SHIDLER.

Recorded March 15th, 1884, at 1 p. m.

1188 Office of recorder of Jasper county.

RENSSELAER, IND., *June 23rd*, 1884.

Mr. Orville Peckham.

SIR: Yours received. In reply will say I fail to find where any liens have been recorded against the Chicago and Great Western Railway Company in my office.

Yours, THOMAS ANTRIM, *R. J. C.*

Recorder's office, Newton county.

KENTLAND, IND., *June 18th*, 1884.

Orville Peckham, Esq., Chicago Ill.

DEAR SIR: Your favor of the 16th inst. is at hand. In reply I will say that the records of this office show two notices of mechanics' liens against property of C. & G. S. R'y Co.—one in favor of A. G. Jakway for $667.93, dated Dec. 31st, 1883, and one in favor of A. W. Shidler for $100, dated Jan. 2nd, 1884.

Yours truly, ELISHA PARSONS,

Recorder, Newton County, Ind.

1189 INDIANAPOLIS, *June* 18, 1884.

O. Peckham, Esq., Chicago, Ills.

DEAR SIR: Yours of the 16th inst. received.

We have a mechanics' lien, &c., law, passed by the Legislature of 1883, and which went into effect March 6, 1883. It is almost identical with the old law published in the 1881 revision. The 1883 act was enacted because it was feared, though we think without reason, that the old act, which is published in the 1881 rev., had been repealed by the general repealing clause of what is known as the practice act of 1881. By the 1883 act mechanics, laborers, and material men can acquire lien by filling notice in proper county recorder's office within sixty days after completion of work or furnishing of material. The section applicable to railroads is as follows:

"All persons who by contract with any railroad corporation whose road is not in operation over the whole line thereof, or by contract with the lessee of such corporation, shall perform labor or furnish material for any such corporation or lessee thereof in the way of grading, building embankments, or making excavations for the track of any such railroad corporation, or who shall build or repair bridges or trestle-work for any such railroad corporation or the lessee thereof, shall have a lien upon such grading, embankment, or excavation, and upon as much of the track of said railroad as is
1190 covered with such grading, embankment or excavation, and
upon such bridges or trestle-work as they may have built or repaired pursuant to any contract made with such corporation or the lessee thereof, upon so much of the track of such corporation as is covered by such bridge or trestle-work; and any such contractor or laborer, if at or before the time he furnished materials or does labor, shall notify such corporation or lessee thereof, or its agent, that he is furnishing the materials or doing work for the contractor or sub-contractor, may also have such lien." Sec. 12, p. 143, Acts 1883.

You are quite right in judging that the recorders' offices of the different counties through which the road runs are the proper places to look for information as to whether there are any liens.

You will, of course, bear in mind that parties have 60 days after completion of work or furnishing of material, as the case may be, to file notice. Then they have a year from time of filing notice in which to bring action to enforce lien.

We think we have answered you fully. If you wish any further information, let us know.

Very truly, JUDAH & JAMESON.

1191 Recorder's office, Parke county.

ROCKVILLE, IND., *June 20th*, 1884.

First National Bank of Chicago.

SIRS: There is a deed of trust or mortgage made by the Chicago & Great Southern Railroad Co. to John C. New, as trustee, for $2,000,000, dated April 18, 1883, and recorded April 28, 1883, book 11, page 337.

Yours truly, HENRY B. CORD, *Recorder*.

Recorder's office, Benton county.

FOWLER, IND., *Jan.* 21, 1884.

Mr. Orville Peckham, Chicago.

DR. SIR: Rec'd your letter and c'k for $1.50, and as to the amount, it is fifty-seven thousand two hundred ($57,200) dollars.

Very resp., NEWTON SHEETZ.

1192 Recorder's office, Warren county.

WILLIAMSPORT, IND., *June* 24, 1884.

Mr. O. Peckham.

SIR: Yours bearing date June 16th, 1884, at hand; would say that A. J. McDonald filed a lien on the property of said R. R., $3,478.17; also Volney Q. Irwin filed mechanics' lien on same, $57,200, and also one Felix Warbritten filed notice of lien on said property for the sum of $288.

Said liens have all been foreclosed at the March term of court

Yours, &c. THOS. J. GRAVES, *Recorder.*

$1.00 fee. Please send by return mail.

1193 LYMAN J. GAGE, being recalled on behalf of the defendants, was examined in chief by Col. COOPER, and testified as follows:

Q. Mr. Gage, have you brought with you a statement of Mr. Crawford's indebtedness to the First National Bank?

A. I have, I think, covering the periods you desired.

Q. Will you please produce it?

A. I have it so I think I can answer any question you want to ask.

Q. I would like to have it to introduce it in evidence in this case.

A. The statement which I have made I can leave, and with a little addition, which I will give verbally for the commissioner to take down, it will show the indebtedness at various times from March 7th, 1881, to January 16th, 1885. The statement shows that on March 1, 1884, the indebtedness was $233,632.33, and that no additions to the debt were made until January 16th, 1885, when the indebtedness was increased to $297,393.17. This increase on that date, January 16, from $233,000 to $297,000, and odd, was occasioned by funding into a note an overdrawn account, which, with a debit of interest on the loans from time to time, aggregated $63,760.84. This amount added to the smaller amount would make the indebtedness on January 16, as shown by the statement, to be $297,393.17.

Q. The statement you have brought here, and which you have produced before the commissioner, is not a transcript from your books, is it, Mr. Gage?

A. It is a transcript of bills-discounted ledger. The addendum which I made about the overdrawn account is not found upon that book, but upon what we call our individual current ledger. 1194

Q. I see that on February 2, 1883, there are what is denominated in this account you have brought here "fresh loans," $180,000, $70,000, $19,000, and $34,928.33; what is that?

A. It is what it purports to be; it was a loan made to him at that time. Out of the proceeds of it, if you will look a little bit further, you will find there was liquidated the same amount.

Q. $233,928.33; what was that transaction?

A. It was simply the taking up of the old notes and——

Q. And making new ones?

A. And making new ones.

Q. Looking over this account and explaining it, knowing its meaning as you do, would you still adhere to your statement made on yesterday to the effect that after the charter of the old bank had expired, and the new bank was organized, Mr. Crawford had not had from the bank any considerable amount of money loaned to him?

A. I don't remember that I made that statement.

Q. That is, as I understand it—that is, after the new bank was organized on the 1st of June, 1882—there had been no new money or no money loaned to Mr. Crawford, outside of the prior indebtedness, except probably, to the extent of twenty thousand dollars?

A. I don't think I dated it from that period; I don't remember that I did; I don't think you asked that question; the testimony will show.

1195 Q. I will ask you, after having your former testimony read over to you, whether or not you are still of the belief, after looking over the books of the bank, that after the new bank was organized there was a very small amount of money loaned to Mr. Crawford by the new bank?

A. I will have to correct that statement, for I see by the books of the bank that considerable sums were loaned to him by the new bank since its organization in May, 1882.

Q. I will ask you, then, to state from that statement how much Henry Crawford owed the old bank at the time of the expiration of its charter on the 1st of June, 1882?

A. As near as I can get at it from this statement it shows the notes out against him, which amounted at the time you speak of to $140,000; this sum, perhaps, will have to be increased if the state of his account on the individual ledger of the bank was looked at; it is possible he may have had an overdrawn account at the time, but I don't recollect whether he had or not.

Q. So you still adhere to your statement that a large amount proportionately of the money of which Mr. Crawford was indebted to the bank on the 26th of December, 1884, was loaned to him by the bank for the purpose of construction of what is known as the Air Line railroad?

A. I see no reason to change that statement.

Q. And the bank on the 26th of December, 1884, had how much of a valid, honest, just *bona fide* claim against Mr. Crawford,
1196 according to your books?

A. Well, it was $297,393.17 less the amount of interest which had accumulated on what he did owe us on the 26th of December, 1884.

Q. Now, the bank, as I understood from your testimony on yesterday, gave up those securities which are mentioned in the contract, or assignment rather, of the 26th of December, 1884, the Louisville, New Albany & Chicago stock, the Wabash bonds, the other stock and the mortgage note, and took an assignment in place of all those securities for that indebtedness of Mr. Crawford's interest in the syndicate contract of that date?

A. Yes, sir.

Q. What agreement did the bank make with Mr. Crawford?

A. None.

Q. What agreement did the bank make for or on behalf of Mr. Crawford?

A. None.

Q. Giving him an interest in this road?

A. None.

Q. What agreement did the bank make with Mr. Crawford's family?

A. None at all.

Q. None at all?

A. None at all.

Q. So that this bank owns to-day, as I understand from your testimony, an assignment of all of Mr. Crawford's interest in the Chicago & Great Southern railway stock and bonds and securities of every name and nature, and the Union Coal Company's stock and bonds or the securities representing that company—everything absolutely—as security for the payment of that money.

A. That is as I understand it absolutely; yes, sir.

Q. Have you never heard of anything different?

1197 A. I never have; no, sir; I don't think there is anything different.

Q. Was that taken by you as a payment?

A. No, sir.

Q. Do you still hold Mr. Crawford's note?

A. We do.

Q. You do?

A. Yes, sir.

Q. Has the bank never made any agreement with Mr. Crawford or Mr. Crawford's son?

A. None at all.

Q. Of any kind?

A. No, sir.

Q. Is there no understanding or agreement?

A. None at all that I know of; no, sir.

Q. So far as the manager of the bank in charge of its affairs, you understand, Mr. Gage, that this is an absolute assignment, *bona fide*, in good faith, without any arrangement, directly or indirectly, for the benefit of Mr. Crawford?

A. That is the way I understand it exactly, Mr. Cooper; yes.

Q. So that whatever Mr. Nickerson'- or Mr. Porter's kindly feelings may have been towards Crawford in connection with Chicago & Great Southern Railway Company, Mr. Crawford never got any benefit out of it, so far as you know?

A. No, sir.

Q. The bank holds everything?

A. It does.

Q. Did you examine into the question as to the market value of the Louisville, New Albany & Chicago stock?

A. I did.

Q. Did you find any quotations of the 26th of December, 1884?

A. I looked at a book published by a stock-broker firm in New York, some of the leading houses there, showing quotations of all bonds and stock for the year 1884, on the New York Stock Exchange,
and therein I find that during the month of December, 1884,
1198 two prices are given in the book, the highest and lowest price;
the lowest price during December, 1884, of the Louisville, New Albany & Chicago stock was 17, and the highest price was 17. If the price quoted could have been realized upon the block of the securities which the bank held, the value of the securities surrendered by the bank in pursuance of the assignment contract of December 26th, 1884, would have been, say: 4,700 shares Louisville & New Albany stock at 17, $79,900; 26,000 Wabash fives, $23,000; 37 shares Gulf, Colorado & Santa Fe at, say, 75, which is a high price, $2,775; $11,000 Herrick mortgage notes, say, $11,000; total, $116,675.

Q. Don't you remember that during that winter, Mr. Gage, there was considerable inquiry for Louisville, New Albany & Chicago stock outside of the New York Stock Exchange for *bona fide* purchase without regard to speculation on the part of persons who desired to control the company?

A. Well, I think I remember of inquiries being made by some people in New York, but I don't know much about it.

Q. Was the market price the basis upon which they were dealing, or wasn't it a higher price than that?

A. Well, I don't know whether there was any transaction made; I don't know of any *bona fide* offers made for it at any higher price; I heard hypothetical talk about what persons might be willing to do.

Q. You didn't know of any talk of that kind accompanied with the cash?

A. No.

1199 Q. You still hold Mr. Crawford's obligation to the bank, as I understand?

A. We hold his notes for the amount of the indebtedness, as stated by me.

Q. And, as I understand from you, there is no arrangement or understanding outside of the note itself that Mr. Crawford shall be let off for anything less than the face of the note?

A. No, sir.

Q. And you hold as collateral security for the note the amount of whatever you may get out of the Chicago & Great Southern Railway Company by virtue of the assignment of Mr. Crawford's interest therein?

A. That is it, sir.

The signature of the witness to the above deposition was waived by agreement of counsel.

VOLNEY Q. IRWIN, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. State your name, occupation, and residence.

A. Volney Q. Irwin; Crawfordsville, Indiana; railroad contractor.

Q. Are you one of the parties to this suit?

A. Well, I have got an interest in some suit some place; I don't hardly know where.

Q. This is a suit wherein Mr. Porter is endeavoring to foreclose the mortgage?

A. Yes.

1200 Q. Did you ever do any work along the line of that road?

A. Yes, sir.

Q. When?

A. I began, I think, on the 17th day of November, 1881, and finished on the 15th of September, 1883.

Q. What was the character of your work?

A. It was earth-work altogether.

Q. What was the total amount of earth-work you did?

A. I think it was in the neighborhood of $50,000—perhaps a little the rise of fifty thousand dollars.

Q. How much of that had you done, say, by the 18th of March, 1882?

A. Well, I had done very little of it.

Q. Very little?

A. Very little; yes, sir.

Q. Had you got pay for what you had done up to that time?

A. No; I think the first payment I got was some time the latter part of March or April; I am not positive now which.

Q. Who paid you?

A. Mr. Conkling.

Q. D. H. Conkling?

A. Yes, sir; D. H. Conkling.

Q. And, as you understood, from whom did the money come?

A. From Mr. Crawford.

Q. How much was due you on account of that work done in grading that road at the time you quit?

A. Well, I got a judgment, I think, perhaps a year afterwards, not quite a year, and perhaps more than a year, for $11,815 and some cents; I think that included interest from the time I quit until the time I got the judgment.

Q. When you quit had the work which you did prior to
1201 the 18th of March, 1882, been paid for—that is, had you been
paid enough to pay you for that?

A. Yes, sir.

Q. With whom did you negotiate your contract?

A. With Mr. Conkling.

Q. The first one?

A. Yes, sir.

Q. And that was the only one you had?

A. The only contract I had.

Q. Where did you do this earth-work?

A. I done it between Oxford and the Wabash river and Attica.

Q. How many miles were there of it?

A. I think there is 15 or 16 miles.

Q. Who had the general control of the corporation, so far as you were concerned; who gave you orders outside of Mr. Conkling?

A. The engineer.

Q. Did you ever see Henry Crawford in connection with the matter while you were doing the work?

A. Mr. Crawford, yes; he was down on the road occasionally. His son, I think, had charge of the road generally.

Q. Did Mr. Crawford ever give you any orders personally?

A. I don't know that he ever did give me any particular orders, except towards the last, hurrying me up to finish the work.

Q. Did you know anything about who the president of the company was?

A. Well, when I made the contract Mr. Foster was president, but I understood at that time Mr. Crawford would be president as soon as the meeting of the board of directors took place, which is some time in the spring.

1202 Q. Mr. Crawford would be president?

A. Yes; the understanding was Mr. Crawford had possession of the road, had bought out Mr. Foster and his associates, and at the next election he would be the president.

Q. Was that the general understanding along the line of the road as to who had charge and general direction?

A. Yes, sir; it was generally understood Mr. Crawford had charge of the road.

Q. And was in control of it?

A. Yes, sir.

Q. The property of the road as well as the affairs of the corporation?

A. Yes, sir.

Q. Was it generally understood down along the line of the road that he was president of the company during this time you were at work—that is, after the spring of 1882?

A. Yes, sir; I think it was, and it was also understood along the line of the road—I don't know by everybody, but persons interested in the road—that he was the contractor of the road; that he was the builder as well as the president.

Q. That he occupied both places?

A. Yes, sir.

Q. I want to ask you how general that understanding was—say from the spring of 1882 down to the time you give in 1883.

A. That he was elected president. Then it was understood that he was also contractor. He did not claim anything else—that is, the officials connected with the road. I never heard Mr. Crawford say anything about it, because I never had any talk with him upon the subject, but the engineers and officials generally.

Q. That Mr. Crawford was president of the road?

A. Yes, sir.

1203 Q. He also had a contract and was building it?

A. Yes, sir.

Q. In other words, practically, Mr. Crawford was the railroad?

A. Yes, sir.

Q. And the railroad company?

A. Well, that was the general understanding all the time, that Mr. Crawford was the railroad company, for there never was any money there before he came.

Q. He furnished the money?

A. He got the credit.

Q. How much is due you on account of the earthwork done along the line of that road?

A. Well, I got judgment on the 12th day of April, 1884, I think, for $11,800 and some odd dollars—a little over twelve thousand dollars now, and then, in addition to that, I bought a judgment that another gentleman of the name of McClarmont, a sub-contractor, had for $1,300 and some odd dollars.

Q. Did you make your contract with the company direct; with the Chicago and Great Southern Railway Company through Mr. Foster as president or Conkling as general manager?

A. Mr. Conkling signed his name, I think, as superintendent or general manager; it was made by the Chicago & Great Southern Railway Company by Conkling, general manager and superintendent of that division.

Q. Did you ever have any subsequent contract with him?

A. No, sir.

Q. You went on under that contract and did your work?

A. Yes, sir.

Q. Did Crawford pay you from time to time while your
1204 work progressed?

A. Yes, sir; after we got started fairly; the first year didn't pay me very much; he paid me a little in the spring and a little occasionally through the summer, and in the spring of 1883, then they paid regularly until we got done, until the last payment.

Q. And that left the company behind?

A. In the neighborhood of $12,000.

Q. Was that work done in the regular manner of grading a railroad—a single track road?

A. Yes, sir.

Q. Where it is now constructed and built?

A. Yes, sir.

Cross-examination by Mr. HENRY CRAWFORD:

Q. Mr. Irwin, you never saw me, did you, before you made your contract with Mr. Conkling with regard to the contract, did you?

A. No.

Q. You negotiated it exclusively with him, and it is in writing and shows for itself, don't it?

A. Yes.

Q. And that is the only contract you ever had, isn't it, of any kind, character, or description?

A. Yes, sir; he signed Chicago & Great Southern railway by——

Q. D. W. Conkling, general superintendent?

A. General superintendent, I believe.

Q. And Mr. Foster was president?

A. At that time this contract was made; yes.

Q. Do you know when I became president of the road of
1205 you own knowledge, or from anything that I told you?
A. No; not anything you told me; I only knew it from
general talk along the line, and from Mr. Foster.

Q. Is it your present impression that I succeeded Mr. Foster as president?

A. I was told so by Mr. Foster and others that you were elected president at the meeting.

Q. Is that all you were told?

A. No; I was told that you had filled the board with your men and they had elected you president.

Q. Don't you know that Mr. Starin was the president of the railroad from the 18th of March, 1882, down to the 18th of April, 1883?

A. No. I understood that Mr. Starin was afterwards elected president in order that you might become a contractor.

Q. You did understand, then, that Mr. Starin was president?

A. Yes; had been president.

Q. You did not state anything about that in your examination just now, did you?

A. No; I didn't remember it.

Q. When did you understand that—right away after Mr. Starin had been elected?

A. No; I don't remember how I got hold of that; I got hold of it some way through Mr. Foster in talking to Mr. Foster.

Q. When?

A. About the time that contract was made with you to build the road.

Q. Supposing that was the 18th of March, 1882, that was just
three days after Mr. Foster ceased to be president then,
1206 wasn't it?
A. Well, I don't know just when he ceased to be president.

Q. I say supposing that was the time?

A. Yes, sir; if that was the fact that would be the case.

Q. So that you knew, didn't you, now, Mr. Irwin, that, at least as far as the nominal president was concerned, *that* Mr. Starin was president of this company from the 18th of March away down until April, 1883, didn't you?

A. No, sir; I didn't know it; my understanding was that when the board met you was elected president, and that you wanted to be contractor of the road, and you could not very well contract with yourself, and you made Mr. Starin president. Now, that was my understanding; whether I was right or not I don't know.

Q. How long did Starin remain president?

A. Well, I think he remained president the greater part of the time I was on the road.

Q. You did not say anything about that, did you, just now in your examination; you said you understood I was present?

A. Yes, sir; that was the general understanding.

Q. You don't mean that now, do you?

A. Yes; I mean it yet; I mean you was virtually president and Mr. Starin was nominally president; that is about the fact of the matter.

Q. That is your judgment of the matter, is it?

A. Well, that was my belief.

Q. Your statement is utterly false, isn't it, so far as I being actually the president during that time, Mr. Irwin?

1207 A. How is that?

Q. I say your statement that I was president is false, isn't it; and you knew it was false?

A. No; you was not president after you made the contract.

Q. And you knew it, didn't you?

A. I didn't think of it.

Q. Didn't you know it?

A. Yes; I remember it is a fact, but you was always regarded as president.

Q. With regard to the work you did down there, did you slouch your work there in the contract that you had or did you do good work?

A. I done good work.

Q. Is the railroad, as far as the work you were concerned in, well done?

A. Yes, sir.

Q. As good as any new road?

A. Your engineer pronounced it well done.

Q. What do you pronounce it as a railroad man?

A. Yes; I pronounce it well done, but I would like to make an explanation. The engineer you had there hadn't capacity enough to lay off a job or say it was well done until you got Mr. Peters there, and he pronounced the work well done.

Q. Is Mr. Peters' final estimate—does that say it was not well done?

A. Well, Mr. Peters' final estimate—he went over the work; I had done things down on what Mr. Beard had been engineer on, and he said it had evidently been very well done; it had passed through a winter, and was still in good condition; that is the report he made to me.

Q. You took judgment, didn't you, in the Warren circuit court in April, 1884?

A. Yes.

1208 Q. You took that judgment, didn't you, on a notice of lien which you gave under your contract?

A. Yes, sir.

Q. And you subsequently sold out that property covered by your lien under your judgment, didn't you?

A. Yes, sir.

Q. And you bought it in, didn't you?

A. Yes, sir.

Q. And it has been since redeemed, hasn't it?

A. I believe it has, though we have never received it.

Q. You know it has been redeemed from that sale, don't you?

A. I know money has been deposited in the clerk's office; I don't say we have accepted it.

Q. Your lawyer has, hasn't he?

A. No; he has not. I expect he would take it if he could get hold of it, but he could not get hold of it. He went and took it, but we made him return it.

Q. Mr. McClarmont also took a judgment, didn't he, in the foreclosure of a lien?

A. Yes, sir.

Q. And you bought that?

A. I bought the judgment; yes.

Q. You bought the road out under the foreclosure, didn't you?

A. Yes.

Q. And that was redeemed, wasn't it?

A. I don't know; we have never received anything.

Q. You know the money was paid within the time, don't you?

A. No; I do not. I was notified that the $500 was paid on ours, but I was never notified anything was paid on the other.

Q. You speak of the money having been paid in the spring of 1883 on your monthly estimates quite regularly; is that correct?

1209 A. Spring and summer; yes.

Q. Of 1883?

A. I think they paid us very promptly.

Q. You knew, did you not, that the Chicago & Great Southern Railway Company had executed a mortgage to secure bonds on its line of road, didn't you?

A. No; I did not—not when I made the contract.

Q. I am not asking about when you made the contract.

A. Yes; I learned there was a mortgage on the road.

Q. Just before those prompt payments began, in the spring of 1883, were you not informed by me that I had made a loan of Drexel, Morgan & Co. to secure funds to go on and actively prosecute that work, and pledged all the bonds of that corporation?

A. I don't think I ever understood it from you, but that was the general talk along the line of the road.

Q. And didn't you understand it distinctly and directly from me, when I had an interview with you and told you I wanted you to put on more force for the reason that I had made that arrangement?

A. No; you told me that you had plenty of money to finish the road, and you wanted it completed at once; something to that effect.

Q. Didn't I tell you I had raised the money by a loan from Drexel, Morgan & Co. on the hypothecation of the mortgage bonds?

A. No, sir; if you did I don't remember a word of it.

Q. Didn't I not only do it once, but didn't I do it several times.

A. No, sir.

Q. Whom did you know from that that transaction had been done?

1210 A. I first learned it by the fact that you sent me a check—Drexel, Morgan & Co.'s check—for the money you owned me.

Q. Were not all of your payments made for quite awhile there by my checks on Drexel, Morgan & Co., countersigned by Riswell Miller?

A. I think there was only one; after that you paid me the money in person.

Q. You knew that the money was coming from Drexel, Morgan & Co., and you knew it was coming on the loan of these bonds, didn't you?

A. No; I didn't know a thing about it; I got that check.

Q. Didn't you know it then?

A. Then I knew that there was that much coming from Drexel, Morgan & Co; I didn't know how much more, and I didn't care; it was not my business.

Q. Do you mean to state here that you knew neither from me nor from any one else by conversation that there had been a loan made from Drexel, Morgan & Co. on the pledge of these mortgage bonds?

A. The only thing I understood about it was in a general way; I had no conversation with anybody in regard to it.

Q. What was your understanding in a general way?

A. It was generally understood you had raised some money.

Q. Where from?

A. After the checks were sent down there to pay for the work; it was then understood that Drexel, Morgan & Co. was furnishing the money.

Q. And wanted it understood that they had the bonds of the company hypothecated for that purpose?

1211 A. Well, I don't know whether it was understood or not; I don't remember.

Q. Didn't you understand it so?

A. Well, I don't know that I thought anything about it; as a matter of course, it would be a natural inference that that was the fact, that you had sold them some bonds or hypothecated some or something, but if ever I had any conversation with you about the matter, I don't remember a word about it.

Q. Don't you remember a conversation I had with you, in the Citizens' Bank, at Attica, *with you* on that subject?

A. No, sir; I never met you in the Citizens' Bank in Attica.

Q. You never met me in the Citizens' Bank there?

A. No; not that I know of, in my life. If I did, I don't remember it. I have met you in Dwiggins' Bank at Oxford.

Q. Isn't there a Citizens' bank at Attica, and isn't that Dwiggins' Bank?

A. Yes; Dwiggins has an interest in it.

Q. That is where the payments were made to you in 1883?

A. You paid me in the engineer's office.

Q. Attica was the headquarters in 1883, wasn't it?

A. You gave me a check and I cashed it at Dwiggins'; after that you paid me the money in the engineer's office.

Q. You say you are informed that your attorney took the money under the redemption; is that correct?

A. My attorney did not; the attorney that my attorney employed to look after it collected it and notified him he had received $500, and we simply wrote back to him to return it. We did not propose to accept it, and it lies there yet; if we can't do any better we will take it.

1212 Mr. **Gardner**: Did you give back his receipt?

A. I don't know. We shall be lucky to get back the money, I know.

Mr. **Crawford**: Do you remember the amount of a check of Drexel, Morgan & Co. that was paid you?

A. No; I do not.

Q. Do you swear there was only one?

A. Yes; I am almost positive there was only one check.

Redirect examination by Col. **Cooper**:

Q. Was it ever until this litigation commenced understood that Mr. Crawford had hypothecated the bonds of this company with Drexel, Morgan & Co. with which to raise money to go on with this road?

A. All the information I got in that line I generally got from his engineer, Mr. Beard, and it was simply given out in order to keep the men at work that Mr. Crawford has now made an arrangement with somebody.

Q. Made an arrangment with somebody—was it with Drexel, Morgan & Co. to furnish money?

A. Yes.

Q. Upon what securities—was that understood?

A. No; I never understood; I just naturally inferred that the bonds were hypothecated from the fact that I talked with Mr. Foster about the issuing of the bonds. It seems to me there was.

Q. What was the trouble about it?

A. I think he refused to sign up some bonds, or something of that kind.

Q. That Mr. Crawford wanted?

A. Yes; I am not positive about it, but I think that was it.

1213 Q. He signed 500 bonds, and Crawford wanted him to sign a thousand; isn't that a fact?

A. Something of that nature; I don't remember positively. I didn't inquire much into it.

Q. And there was trouble between Crawford and Foster about that matter?

A. I know there was some difficulty about issuing bonds. They wanted them faster than they could print them, and they could not get them.

Recross-examination by Mr. **Crawford**:

Q. Who told you that bonds had been issued?

A. Mr. Foster.

Q. When?

A. Some time in the spring of 1882.

Q. 1882?

A. Summer or spring of 1882; I don't remember exactly when.

Q. Didn't he tell you that the bonds he had signed he had also hypothecated?

A. No.

Q. What did he tell you he had done with them?

A. He told me he had signed them for the company.

Q. But never did anything?

A. No; he never told me anything about what he had done with them.

Q. Whether they were issued or unissued?

A. I don't suppose he done anything with them. He had no money, and I supposed, of course, he hadn't used them.

Q. You knew they were in a shape to be used and were not used?

A. I supposed they could be used, and he had no money,
1214 and it was evidence to me that he had not used them.

Q. You had an equal idea, did you, that when the money did come that they had been used?

A. No; I was led to believe you had plenty of money outside of that. The talk along the line of the road was as quick as you got through with the Air Line you would have all the money you wanted; that you had made a big thing on that, and as quick as you got settled with that this thing would be pushed forward rapidly. That was the general talk.

Q. And it was your idea the money would all be furnished without any bonds or anything else; was that it?

A. No; I knew you would have to sell some bonds, or borrow some money. I didn't know anything about your capacity to borrow money, or anything of that kind.

Q. You knew the bonds would have to be used, didn't you?

A. Well, as a general principle in building railroads they have to use bonds; I know that.

The signature of witness to above deposition was waived by agreement of counsel.

Henry Meiselbar, being recalled, was further cross-examined by Mr. **Pierce**, and testified as follows:

1215 Q. Mr. Meiselbar, you say at one time you had an office with Mr. Crawford in the Montauk Block?

A. No, sir.

Q. Where was it—on Dearborn street?

A. 125 Dearborn street.

Q. I wish you would tell me how those offices were arranged—who else was there beside yourself and Mr. Crawford?

A. Mr. Moore was with me at that time; there was a corner office next the elevator; it was situated on the northeast corner of that floor, and the railroad offices were on the other side of the hall, and adjoining my office was the chief engineer's office—a long office in the rear. Mr. Crawford's office was adjoining the library room.

Q. Who else had offices there?

A. There were some parties in the corner; I don't remember who they were now.

Q. Do you remember that Judge Barry had an office there somewhere?

A. Yes; he had desk room in the office, which was the main office of the railroad office.

Q. He had desk room in there, had he?

A. Yes, sir.

Q. Were there any other rooms leading out of that; did you go into any other room from that room?

A. Mr. Starin had an office.

Q. Where was Mr. Starin's room?

A. His was on the same side of the north room where Judge Barry had his office.

Q. Did you have to go through Judge Barry's office to go through Starin's office?

A. Yes.

Q. There was a way through there, was there?

A. Yes.

1216 Q. That was where the railroad company usually had its meetings of directors, wasn't it, in Mr. Starin's office?

A. I don't know.

Q. Don't you know that is where they had their meetings of directors?

Col. **Cooper**: Do you mean this railroad company?

Mr. **Pierce**: The Chicago and Great Southern Railway company.

A. I don't know it.

Q. I will ask you if you don't remember being at a directors' meeting, say, about two years ago, and that you, in coming out from that directors' meeting, stopped in Judge Barry's room—the room occupied by him—and stated in his presence that you had just been to a meeting of the board of directors of the Chicago and Great Southern Railway Company; that you was a director of that company, and that you intended to make it cost somebody something.

A. No, sir.

1217 Q. Did you ever make that statement in the presence of Judge Barry in that room?

A. No, sir; I don't remember any such thing ever happening.

Q. Either at the time I indicate, at the adjournment of the board of directors about two years ago, or at any other time? Did you ever make a statement of that kind there?

A. Not to my recollection; no, sir.

Q. You never did?

A. No, sir.

Q. Are you sure of that?

A. I am certain of it; I am just as sure as I am of anything.

Q. This morning you came in and brought in a letter-press copy of a letter; this is it, is it? (Handing to witness letter marked Exhibit P.)

A. I don't know as I brought it in.

Q. Where did you get it? That is the letter, is it?

A. That is the letter, yes.

Q. Where did you get it?

A. That letter was sent to me by Mr. Lacey; I received it by mail yesterday morning.

Q. Did a letter come with it—did he write you a letter when he sent you that?

A. Yes; I have got a letter.

Q. Is there anything in the letter referring to this?

A. It referred to this and other papers.

Q. Is there anything in that letter referring to this?

A. About this specially?

Q. Yes.

A. Not that I recollect now; the letter will speak for itself.

Q. Have you got that letter with you?

A. I have not; no, sir.

1218 Q. He sent that letter to you, did he?

A. Yes, sir; Mr. Lacey, when he was here, said he had some papers. Said I: "All right; send them on and let us see what they are." I got them yesterday morning and put them in my pocket.

Q. Do you remember what the papers had relation to?

A. The Great Southern; I don't know what they were. He says in his letter, "I have looked over my papers and I find I have got a lot of rubbish."

Q. Did he say anything else besides that?

A. Yes.

Q. What is that—what does it appear to be?

A. It seems to be——

Q. Is it a letter-press copy?

A. Yes.

Q. A letter-press copy of a letter, is it?

A. Yes, sir.

Q. And does it seem to have been torn out of a book or cut out?

A. There is a page number on it.

Q. What is the number of the page?
A. Page 71.
Q. Does it seem to have been cut or torn from a book?
A. It seems to be ripped out of a book.

Solicitor for complainant offered the letter produced in evidence, which is marked Exhibit P.

Q. Is that Lacey's handwriting?
A. To my best judgment I should say it was. Mr. Lacey told me——.
Q. What other papers have you got in addition to that letter relating to the Chicago & Great Southern that he sent you?
A. I don't know. I am attorney for Mr. Lacey, and I don't know that I am compelled to tell.
Q. Lacey was a witness here on behalf of your client, wasn't he?
1219 A. Yes.
Q. He sent you a lot of documents relating to this matter?
A. It had no relevancy to the question at all; I don't see why I should produce them; I am going to send them back.
Q. I ask you to produce them. Do you decline to do it?
A. I don't know why I should produce them; I claim the matter to be privileged communication between Mr. Lacey and myself.
Q. You claim whatever documents or papers you have received from him as a former officer of the Chicago & Great Southern Railway Company is a privileged matter?
A. It is between he and I, I should think. It don't make much difference to me whether I produce them or not; but Mr. Lacey sent them to me, and I would rather deliver them to Lacey than to anybody else.
Q. Will you produce them here or not?
A. I want myself exonerated in the matter, of course; that is the only reason why I produce them.

Col. Cooper: I will state to Mr. Meiselbar that he is under neither a moral nor legal obligation to produce any paper he has received from Mr. Lacey if he received them from Mr. Lacey as his client, and that Mr. Pierce is not the attorney of the Chicago & Great Southern Railway Company, and that he has no right on behalf of the Chicago & Great Southern railway to ask the young gentleman to produce these papers; and I will say further that it is an attempt at bulldozing that I never saw before in a court of justice or before one of the officers of a court of justice.

1220 Mr. Pierce: I ask you to produce those papers, letters, and documents, whatever they are. What do you say about it? What is that you have in you hand now?
Col. Cooper: Never mind.
A. I stated I received those papers from Mr. Lacey on certain terms, and that he said he thought there was a lot of rubbish.
Mr. Gardner: Are those papers which belong to the Great Southern Railway Company?

A. That I cannot tell; I received them from Mr. Lacey.

Q. Will you look at them and see whether they are papers that belonged to the Great Southern Railway Company?

A. I could not tell whether they belonged to that or not.

Q. Please look.

Col. Cooper: Mr. Meiselbar, are you willing to submit all these papers and documents that you received from Mr. Lacey to me, with the understanding that if there is anything among them, as this paper which has been produced in evidence seems to be, that properly belongs to the Chicago & Great Southern Railway Company, that I, in the exercise of my judgment, may turn them over to Mr. Gardner as the attorney for the company?

A. I will do that. (Papers handed to Col. Cooper.)

Q. Are those all you have got?

A. I have got some more; I will bring them down.

Mr. Pierce: When will you bring them down?

A. Monday morning; I will hand them to Col. Cooper just as I got them.

Adjourned to——

1221 Wednesday, *November* 18*th*, 1885.

Pursuant to agreement parties met at the same place at 1.30 o'clock p. m.

Present: Henry A. Gardner, Esq., solicitor for the Chicago and Great Southern Railway Company; Col. John S. Cooper, solicitor for defendants, and Henry Crawford, Esq.

John N. Jewett, a witness called on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Crawford, and testified as follows:

Q. State your name, age, residence, and occupation.

A. John N. Jewett; Chicago; attorney-at-law.

Q. Did you, in the years 1881 and 1882, represent A. J. Dull and Henry McCormick, of Harrisburg, Pennsylvania, in a contract which they had with me in regard to the purchase of the entire stock of the Chicago Block Coal Railroad Company?

A. I did; I drew the final contract between Mr. Crawford and A. J. Dull, as trustee, if I remember rightly. I afterwards learned that Mr. McCormick and other parties were interested in that contract.

Q. The contracts were all in writing and will show for themselves when the time comes?

A. The contract was in writing.

1222 Q. Do you remember as to whether or not, at the close of the year 1881, there had been some moneys paid on that contract? (Handing to witness paper marked "Complainant's Exhibit 1.")

A. The purchase-price of the property was represented under the contract, I think, by a note—my recollection is of $200,000—payable at some future day after the date of it, and after the date of the contract; that note was not paid at its maturity.

Q. Just state in that same connection whether that maturity had not occurred prior to——

A. Its maturity, judging from the paper now shown me in my handwriting, dated at New York, January 27, 1882, must have been some time in the fall of 1881.

Q. Wasn't the situation at the time of the date of the paper which you now have in your hand this: That the note was past due, and that there had been something paid upon it, and that Mr. Dull for further forbearance required additional security?

A. The note certainly was past due at the date of this paper, because I went to New York to meet Mr. Dull and Mr. Crawford for the express purpose of adjusting this matter if possible. Something was paid upon that note either prior to or very soon after its date; it was not paid to me, and I am, therefore, at the present time unable to say whether it was prior to this or afterwards; at least I was so inforned by Mr. Dull.

Q. Was there any question, in the course of the negotia-
1223 tions in New York, just prior to the date of this paper, Janu-
ary 27, 1882, with regard to my furnishing additional security
upon that note? And, if so, state what that arrrangement was, and
what was done.

A. There was an agreement made between Mr. Crawford and myself—I representing Mr. Dull—by which additional security was to be and was furnished at the date of the paper, which is now before me, the 27th of January, 1882.

Q. Do you remember what that additional security was? If so, state the same.

A. In a general way I do; it was all of the issued stock and all of the issued bonds of the Chicago and Great Southern Railway Company; that is my present recollection.

Q. Do you remember how many of the issued bonds of the Chicago and Great Southern Railway Company there were at that time?

A. But for the paper which is now before me in my handwriting, which represents the matter as it then stood, or, as I then understood it, I should have said that the bonds actually negotiated at that time amounted to $400,000; but I see this paper mentions bonds certified by the trustee and issued as amounting to $1,000,000—that is 1,000 of the bonds of $1,000 each; and I therefore have no doubt, as I am now informed, that the 1,000 bonds were delivered into the custody of Mr. Dull as security for this claim at the date of this paper, which is January 27, 1882.

Q. Were you personally present when there was a delivery of the
bonds to Mr. Dull under that pledge?

1224 A. I went with Mr. Dull and met Mr. Crawford at a safe
depository company office in New York; the name of it now
I cannot remember.

Q. Wasn't it the Equitable Safe Deposit Company, 120 Broadway?

A. I cannot remember that, Mr. Crawford. Mr. Crawford went with Mr. Dull into the vaults of that company for the purpose of making the delivery of whatever was in the safety-deposit box, then controlled by him, and to which, as I understood, he had the key. I did not go there, and only knew from what Mr. Dull told me when he came back, and that was that the contents of that vault were delivered to him by Mr. Crawford, and he had the key to the box; and I was advised by Mr. Dull that he had in his possession and control the securities contained therein, and that they answered the description of the securities that we had contracted for.

Q. He told you, did he not, that he had counted them there?

A. I think he did; he went there for that purpose.

Q. At the same day do you remember visiting Mr. John C. New, the trustee, in company with Mr. Dull and myself, for any purpose? If so, state what that purpose was.

A. I did; I met Mr. New at his office. It was a part of the arrangement between Mr. Crawford and myself—I representing Mr. Dull—that no more of the bonds of the Chicago and Great Southern Railway Company should be issued without Mr. Dull's consent, and I went to Mr. New's office for the purpose of getting from him a stipulation to that effect.

1225 Q. Did you procure such stipulation? If so, please produce the same.

A. I did; I wrote the stipulation in Mr. New's office, and I now have it in my hand. It is my handwriting, and I have no doubt it is the actual paper.

Q. Is that the original signature of Mr. John C. New at the bottom, affixed in your presence on the 27th of January, 1882?

A. I don't know Mr. John C. New's signature, but this is the only paper of this sort that I ever wrote in my life. Mr. New signed that paper in my presence, and I have no doubt that is the paper. I speak now of the first page of the paper; what was subsequently added to it I know nothing about.

Solicitor for complainant offered in evidence the paper referred to, with the endorsements thereon, marked "Complainant's Exhibit 1."

Q. Mr. Jewett, be good enough to examine the signature upon the second page of the paper, at the top of the page nearly, and state whose signature that is—of the date of January 5, 1883?

A. In the course of this business I received a good many letters from Mr. Dull, and I have no doubt that the signature inquired about is Mr. Dull's signature.

Q. Mr. Jewett, do you remember whether the stock of the Chicago and Great Southern Railway Company was not delivered to you personally to hold, as trustee under that contract and pledge?

A. My recollection is, that I held the certificates of stock and the records of the company in my own possession for several months.

1226 Cross-examination by Col. COOPER:

Q. Mr. Jewett, how long prior to the 27th of January, 1882, had you been concerned in this matter for Mr. Dull and Mr. McCormick is it?

A. Well, the man I knew in the transaction was Mr. Dull—that is not quite right, because I think Mr. McCormick came to me first about it, and I drew the contract between you and Mr. Dull under Mr. McCormick's suggestion, Mr. Dull then being away.

Q. How long prior to the 27th of January?

A. I am not able to say whether it was in May or June, 1880, or May or June, 1881, when I was first consulted about this matter. My books, I presume, would show my first charge in the matter, and that was the beginning of my connection with it. My books are not here.

Q. The subject-matter of your consultations with Mr. Dull, and your advice to him, and what you did as counsel, was with connection with the purchase by Mr. Crawford of what is known as the Chicago Block Coal Railroad Company or its securities, was it not?

A. My first connection with the matter was the drafting of the contract between Mr. Crawford and Mr. Dull, at the instance, as I now remember, of Mr. McCormick.

Q. And that, you think, was May or June, 1880 or 1881?

A. That is my recollection.

1227 Q. The subject-matter of the whole business was the purchase by Mr. Crawford of the securities of the Chicago Block Coal Railroad Company from those gentlemen, was it not?

A. As I understood. At that time, and as I think the contract itself will show, if produced, Mr. Crawford had bought this stock and property of a coal road in Indiana, the exact name of which I could not now state, excepting Block Coal was part of it, for $200,000.

Q. From what you have since learned and from what you knew then, was it or not a part, according to your best recollection and belief, of what is now known as the Chicago and Great Southern railroad property?

A. It was not at that time, but I subsequently understood that that coal road was to be consolidated with the Chicago and Great Southern railway, and to become a part of the line of railroad known by that name.

Q. Do you remember the length of the road?

A. Well, I do not definitely; it was not long. I should say, from my present impression, of constructed road it was not any more than 20 or 30 miles.

Q. Do you remember whether it was a road extending from Attica to Yeddo, Indiana, not constructed, but constructed and to be constructed?

A. I remember in that connection the name of the place Attica
as the northern or northwestern point of the road, but the southern
or southwestern terminus I could not now remember. I remember,
though, the word Attica, because, as it now occurs to me, there
1228 was a bridge to be built at Attica.

Q. That had not yet been built?

A. That had not been built at that time as I remember.

Q. And the purchase price, as I understood you, was $200,000?

A. That was the amount of Mr. Crawford's note given for the purchase-money.

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A. That had not been built at that time as I remember.

Q. And the purchase price, as I understood you, was $200,000?

A. That was the amount of Mr. Crawford's note given for the purchase-money.

Q. The securities representing the property, do you remember what they were?

A. I never saw them, and don't know definitely, excepting what Mr. Dull or what Mr. McCormick told me.

Q. You can state what they informed you.

A. I understood from them that they held the entire property and securities in their possession as security for payment of the note. They were the entire representatives of the property sold to Mr. Crawford.

Q. Mr. Crawford bought his securities representing the property from this gentleman, Mr. Dull, and hereafter I shall name Mr. Dull as the vendor, for $200,000, and received a contract of sale from Mr. Dull, and gave his note for the $200,000. Was that the transaction at that time?

A. As I said before, I had nothing to do with the securities which Mr. Dull originally held for the purchase-money of this coal road, and don't know what they were, but I understood them to be the representatives of that property entire. Mr. Crawford bought the
entire coal road, whatever it was, or the representatives of it,
1229 for $200,000, and left all of the representatives of that prop-
erty in the hands of Mr. Dull as security for the payment of his note, Mr. Dull representing the entire interest in that property, as I understood it, as trustee for himself and other parties.

Q. How long had that note to run, if you remember?

A. From recollection simply, I should say six months from its date. It might have been longer, but that is my best recollection; and I should therefore say that if the transaction in my office was in 1881, that the note matured some time in November or December of that year.

Q. When that note came due it was not paid, as I understand you from the paper that has been produced in evidence and from your direct examination?

A. It was not paid; at least not in full.

Q. At the time that the note came due did you take any security from Mr. Crawford?

A. No further security, to my knowledge, was taken for that note until I went to New York to meet Mr. Crawford and Mr. Dull, as I have already stated.

Q. Now, at the time that you met these gentlemen in New York, about the 27th of January, 1882, at that time did Mr. Crawford put in your hands as trustee, for further security for his note, representing the purchase-price of this property, the certificates of stock and the record-book of the company?

A. No; not at that time. My recollection would be that Mr. Crawford signed an agreement to deliver to me, in Chicago, upon
his return, the issued stock of what was then known as the
1230 Chicago and Great Southern Railway Company and the
record-books of that company, so that I could satisfy myself, as nearly as the records would do it, of the fact that I received all the stock. After my return, some time after—how long after I cannot now remember—it is my recollection that Mr. Crawford or the secretary of the company, his son, I think, at that time, brought into

my office the certificates of stock and the record-books, and I held them until they were delivered up to somebody else.

Q. Do you remember about how long it was after you returned; that is, state the outside date?

A. I could not.

Q. Was it as long as three months after you returned from New York before he delivered the record-book and the stock certificates?

A. It is my impression that I had to insist upon the performance of that contract once or twice with Mr. Crawford, but I do not remember of any unnecessary delay in the matter. It might have been a month or two months.

Q. It was not probably, according to your best recollection, more than three months?

A. I could not say; I could not state with any definiteness when they passed into my hands; I know I got them.

Q. Would you say it was before the first of June of that year, 1882?

A. I could not tell.

Q. It was some time within a year, was it not?

A. Oh, I should think so; I should think Mr. Crawford responded to that agreement of his—whether it was in writing or verbal—between him and me with reasonable diligence. At least, I had no trouble with him about it. 1231

Q. Do you remember how much stock had been issued at that time—about how much in par value—in dollars?

A. My recollection would be that it was about fifty or sixty thousand dollars; it might have been less and it might have been more. My memory does not enable me to state that definitely.

Q. Do you remember about what time it was that your clients got their pay—in other words, that Crawford's note was paid?

A. Of my independent memory, I cannot say. I was only advised of it through Mr. Dull, and when it was done he sent me a check for my fees in the matter, and the entry on my books would show about the time.

Q. Will you please send over, as part of your deposition, the date?

A. I will if I have got it; my books have been changed once or twice since then.

Q. If you have any memorandum by which you can fix the date I would like you to give it.

A. I think I can; it was some time after this.

Mr. Crawford: It is on that paper, isn't it?

Col. Cooper: This is dated January 5, 1883; that is a direction by Mr. Dull to John C. New, trustee.

A. I could not remember; that would not refresh my recollection. My entry in my books would show when Mr. Dull paid me and it was settled before that time. He was here in Chicago and either gave me a draft or sent me a check shortly afterwards. 1232

Q. Do you remember to whom you delivered the record-book of the company and this stock?

A. The name of the man I do not remember, but it was a man representing Mr. Jesup, of New York, who, I understood at that time, was negotiating for the securities which Mr. Dull held through Mr. Crawford.

Q. Do you remember whether the name of the gentleman was Cuyler?

A. That is the man's name, I think.

Q. De Witt C. Cuyler, is it?

A. My recollection is that it was Mr. Cuyler, but his first name I could not state.

Q. Do you remember how it was that you gave the record-book and the stock to Mr. Cuyler?

A. I am not so certain about delivering to him the stock, but I do remember of going to the Grand Pacific Hotel one evening and either taking there myself the record-book and the stock, or certain of the record-books, and submitting them to the representative of Mr. Jesup, whose name I think was Mr. Cuyler, and I don't think they ever came back into my possession after that time; but whether I delivered to him the certificates of stock at that time I am not certain.

Q. And, as I understand you, Mr. Jewett, in addition to the thousand bonds of the Chicago and Great Southern which were turned over to Mr. Dull in New York on the 27th of January, 1882, you subsequently received from Mr. Crawford, as security for his note for $200,000, the stock and record-book?

A. The idea of the arrangement between Mr. Crawford and
1233 me in New York was that he should put up as security for
Mr. Dull's note the entire interest in the Chicago and Great Southern Railway Company which he held or controlled, and all the securities came either into my hands or Mr. Dull's in pursuance of that agreement.

Q. Do you remember whether there was a stock-book at that time turned over to you by Mr. Crawford, of the company?

A. Without knowing specially, I should say no. I think I had nothing but the record of the proceedings of the board.

Q. Of the company?

A. Of the company.

Redirect examination by Mr. CRAWFORD:

Q. Recalling your recollection to the understanding, was there anything in the papers that were executed in New York that provided that the record-books should be impounded as security?

A. No.

Q. Or was it not simply that the record-book and papers should be exhibited to you, so that as a lawyer you would be satisfied as to the validity of the mortgage and bonds, and ascertain as to the validity of the stock and the amount outstanding?

A. That was all, of course; the record-book would be nothing as security in itself, and it was furnished me simply as a means of judging whether or not I got the entire issue of stock.

Q. Are you prepared to state as a matter of memory that
1234 that record-book remained there continuously until Mr. Dull
was paid?

A. I don't think it did; I think I delivered it, as I have stated, at the Pacific Hotel to Mr. Cuyler, with the authority of Mr. Crawford, and my recollection is that it never afterwards came back into my possession.

Q. Recalling your recollection to the Cuyler interview, did I not request you to go with me there and see Mr. Cuyler, so that Mr. Cuyler could have the benefit of your opinion with regard to the validity of the mortgage and the transactions that you had examined in the record-book?

A. I think that is all there was of it. There was at that time, as I understood it, a negotiation pending between Mr. Crawford and Mr. Jesup for the purchase of the securities which Mr. Dull held.

Q. The Great Southern securities, you mean?

A. Or for some advances in relation to it, and Mr. Cuyler was, as I understood it, the representative for Mr. Jesup.

Q. Do you remember also that with Mr. Cuyler, who came out to look after the legal part of the matter, there was also a gentleman with him who was to go over the road to look at its physical condition?

A. That I don't remember. I understood Mr. Cuyler was an attorney, and was here for the purpose of investigating the legal questions that might arise in respect to these securities.

Q. Mr. Jewett, don't you remember that there was exhibited to you a certificate, under the seal of the company, and signed by the secretary, that only a certain amount of stock had ever been
1235 issued and outstanding, and that that was one of the papers that was put into your custody; and there was also, was there not, exhibited to you a contract made between myself and William Foster for the purchase of the stock of the Indiana and Chicago railway?

A. It is very likely there was such a certificate signed by the secretary of the company; I do remember that Mr. Foster's name occurred in the papers that were in my possession, but the special papers that were given to me I cannot now designate.

Q. As far as the stock is concerned which you held, handed over to you by me, did you not hold that until you sent it to Mr. Dull about the time that he was paid, and went out of the matter?

A. I am not able to remember definitely when the certificates of stock went out of my possession, but I have no doubt that I held them until Mr. Dull's debt was paid; I should have done so, and, therefore, I presume that I did.

1236 Recross-examination by Col. Cooper:

Q. Prior to the transaction in New York in January, 1882, had you ever examined for Mr. Dull the questions affecting the validity of the bonds and mortgage and the issuing of the stock of the Chicago & Great Southern railway?

A. Not at all, further than it was shown by the records which Mr. Crawford placed in my hands.

Q. Those records were not placed in your hands until after you returned from New York?

A. No.

Q. And the bonds had been hypothecated for the security of this note of two hundred thousand dollars in New York prior to the time you got the record-book, had they not?

A. Yes.

Q. So that it was not until after Mr. Dull had the security of the thousand bonds of the Chicago & Great Southern railway that you got hold of the record-book at all?

A. That is my recollection.

Q. Do you remember whether you examined that record-book to see the construction contract between Mr. Crawford and the company?

A. Definitely, I cannot say that, but I knew there was a construction contract between the company and Mr. Crawford, and I presume I saw it, but I am not now able to say that I did or did not.

Q. Did you know at the time the transaction occurred in New York the relations which Mr. Crawford sustained to the company—
I mean as to the ownership of stock or the control of the corporate
1237 affairs of the company?

A. My recollection would be that Mr. Crawford was a director of the company and a contractor for the building of the road, and that these bonds had been issued to him in pursuance of his construction contract so far as they had been actually delivered; beyond that I don't think I knew or was advised of the situation.

Q. Wasn't this about the situation of the matter—that Mr. Dull, under your advice, took all the security he could get in New York from Mr. Crawford for the payment of this note?

A. That is exactly what I went to New York for, and it is what I thought my mission there had accomplished.

Q. Now, as to whether those bonds were valid or not—as to whether Mr. Crawford under his construction contract had a right to the bonds—was a thing you had not inquired of until you went to New York?

A. I don't think I ever inquired specially into that question.

Q. I want to state to you, Mr. Jewett, and it appears to be a fact in this case, without any question, that Mr. Crawford's construction contract was entered into on the 18th of March, 1882; that would be some two months, or nearly two months, after you returned from New York, and the mortgage did not at that time, when you returned from New York, appear upon the record-book. Now, what I will ask you is this, whether or not at the time you actually got possession of the record-book, this construction contract between
Mr. Crawford and the company and the printed copy of the
1238 mortgage pasted into the railway company's record-book appeared there?

A. I should think it did; that would be my recollection, and it may be that I have confused that with what I knew at the time of the settlement in New York—what I understood afterwards.

(The record-book is here produced.)

Q. Do you recognize that book now presented to you, and which I will say is the record-book of the Chicago & Great Southern Railway Company, and formerly of the Chicago & Indiana Railway Company, already introduced in evidence, is the book which was left with you by Mr. Crawford in pursuance of your arrangement in New York with him.

A. Well, it was either this book or one very much like it. I should say, on a very hasty examination of it, that this is the book that I had in my possession, because I recognize in it the names of certain persons, and more especially that of William Foster, and I think his name occurred in the records that I had before me; and I should say that the book that I had had pasted in it, as part of it, the printed copy of the mortgage or trust deed given by the Chicago & Great Southern Railway Company to John C. New, and the copy pasted into this book, it seems to me, I have seen before; the color of the paper and the style of the printing looks familiar; I must have seen either this copy or some other one of the mortgage.

1239 Q. Are you able to state, so as to give a substantial recollection, that the proceedings of the meeting of March 18, 1882, as recorded in that book were in the book when it came into your possession?

A. I cannot definitely recognize this as the exact thing which I saw, but the appearance of the thing is such as induces me to believe that this was the book in its present shape so far as I have examined it, including the proceedings of March 18, 1882, which I received from Mr. Crawford. Whether there has been anything added to it since then or not of course I don't know, but up to that point I should say that my impression is very strong that that is the same book.

Q. Do you remember about how long after you received this book it was that you turned it over to Mr. Cuyler at the Grand Pacific Hotel, in accordance with that arrangement or order of Mr. Crawford?

A. I do not, and cannot state from definite recollection, but I should think it was some time in the subsequent fall or in the summer or fall of the same year. My recollection is that it was before winter weather had set in.

Q. And at the time that was done, Mr. Dull had not received his pay for the Block Coal road?

A. I cannot state from any independent recollection when Mr. Dull was paid, but I think not. I think he had not been paid when Mr. Cuyler was here, and that the negotiations which were then pending were intended to relieve the securities which Mr. Crawford had placed in Mr. Dull's hands for the purpose, first, of paying Mr. Dull.

1240 Q. Now, Mr. Jewett, if you will be kind enough to just make such examination as your time will allow of to find out about what time, according to the memoranda that you may have, Mr. Dull was paid, I would be obliged to you, and it can be stated at the conclusion of your deposition?

A. I have no doubt Mr. Dull's letters and my memoranda will enable me to fix that with a great deal of definiteness, and I will either send around or come around myself with that information, and add it if you want me to.

Mr. **Crawford**: Mr. Jewett, as a matter of refreshing your recollection on the subject of the custody of that record-book, the record-book was to be delivered to you for the purpose of verifying the condition of the corporation, and its stock and bonds as of the date of January, 1882, wasn't it?

A. The entire purpose of delivering the record-book was to satisfy me, so far as I could be satisfied with the record-book, of the genuineness and sufficiency of the securities that Mr. Dull had taken.

Q. At that date?

A. At that date, of course.

Q. Do you think that as long a time intervened between that contract in New York and your first sight of that record-book as nearly two months?

A. Mr. Crawford, I cannot say that; I don't know, I don't remember anything about it.

Q. Let me refresh your recollection; are you prepared to express even a view that your custody of that record-book was continuous and exclusive from the time you first did see it until Mr. Cuyler
took it; isn't it true now, when you come to reflect on it,
1241 that you allowed me or a messenger from my office to have
that record-book on a great many occasions for the purpose
of putting in directors' minutes.

A. It is very likely I did, although I do not now recall any special instance of doing it.

Q. You would have done it, wouldn't you?

A. Why, of course I should; the record-book was of no account as security; I simply held it as a means of information.

Q. Now, with regard to the fact of that being pasted in the book there in that style, if you had seen a loose copy of it, like that, for instance (handing paper to witness), it would have been the same as that pasted in the book, wouldn't it?

A. Precisely the same; the copy now shown me is precisely the same apparently as that pasted in the book.

Q. Don't you remember you had a copy of that in New York when we were sitting down conferring with Mr. Dull?

A. I think I did.

Q. Don't you remember the original of that on thin parchment was shown you by Mr. New in New York?

A. I think I saw the original of the mortgage or deed of trust in New York properly executed and undoubtedly in Mr. New's possession, and whether I saw the printed copy of that original in the form now shown me, which is exactly the same, so far as I can see, as the one pasted in the book, outside of the book, or in the book, I cannot positively state.

Col. **Cooper**: I would like to ask you whether you can now re-
member, after your return from New York and the receipt of
1242 the record-book, any consideration which you gave the ques-

tion of Mr. Crawford's contract with the railroad company—I mean the construction contract; do you remember of giving that matter any consideration?

A. I cannot answer that question with anything like certainty as to the time when I first learned the fact that Mr. Crawford was the contractor for building the Great Southern railway; nor can I tell whether it was understood by me that he was or was to be the contractor for the building of the road at the time of the settlemet with Mr. Dull in New York; but either at that time or at some subsequent time not very far distant from that I learned the fact that he had contracted for the building of the road. I think I got it from Mr. Crawford, because he and I had a great many interviews in respect to this claim of Mr. Dull's, but when I got it from him I don't know that I can say.

Q. Can you remember what information you had as to how and why and on account of what consideration Mr. Crawford had this thousand first-mortgage bonds of the railway company in New York?

A. No; all I know about that is that he had in his possession and claimed to control the bonds which were passed over to Mr. Dull.

Q. In what way did he claim to control them; as the owner of them or as negotiating them for the company, or to be used as collateral security in the affairs of the company, or how?

A. That I could not say.

1243 Q. As I understand from you, you simply took what security you could get?

A. That was the outcome of it and that is the fact; that is the fact of the case. I will say this, that Mr. Crawford at that time claimed to have made an investment on account of this Great Southern railroad which entitled him to the control of these bonds but the particulars of his right of control I don't think either I or Mr. Dull made any inquiry in relation to.

Q. At the time that this transaction in New York occurred on the 27th of January, 1882, you and Mr. Dull had made various attempts to get some payment on account of Mr. Crawford's note, had you not?

A. Well, I think I had been pressing Mr. Crawford here in Chicago for the payment of the note ever since it had matured; from the time of its maturity up to the time we went to New York to make this adjustment, if possible. I want to add that these matters have not been called to my attention at all since the facts themselves transpired, and I am not able to give more definitely the dates than I have done, because, having occurred some years ago and my attention not having been called to them at all, I have had no occasion to consider the subject.

Mr. Jewett subsequently handed to the commissioner a memorandum, of which the following is a copy:

" CHICAGO, *Nov.* 19*th*, 1885.

" John Gray, Esq., examiner, &c.:

1244 " My books show that Mr. A. D. Dull adjusted and paid my account for services in the matter of his claim against Henry Crawford, Esq., on the 20th day of February, 1883.

" It was a few days before that, I think, that Mr. Dull advised me that his claim against Mr. Crawford had been paid in full.

" Respectfully yours, JNO. N. JEWETT."

1245 J. E. STUBBS, a witness called on behalf of the complainant, being first duly sworn, was examined in chief by Mr. CRAWFORD, and testified as follows:

Q. State your name, residence, and occupation.

A. J. E. Stubbs; residence, Chicago; I am in the coal business at present.

Q. What business were you engaged in in 1881 and 1882?

A. I was an iron broker, in partnership with Mr. Runyon; the firm was Stubbs & Runyon.

Q. Did you represent the Cleveland Rolling Mill Company in a claim which they had in parts of these years against the Chicago & Great Southern Railway Company?

A. I sold quite a quantity of rails for them to the Chicago & Great Southern Railway Company.

Q. You represented them, did you?

A. Yes; as a broker.

Q. Do you remember that towards the beginning of 1882 there was some arrearages on the metal that had been delivered to the Great Southern Railway Company?

A. Yes; I remember it.

Q. Do you remember visiting my office with regard to the transaction?

A. Yes; a great many times.

Q. Do you remember making a demand for securities of the road as collateral?

A. I asked Mr. Crawford, after asking for the money a great many times, if he could not give something to secure the Cleveland Rolling Mill Company, bonds or notes or something.

1246 Q. What statement was made to you with regard to where the bonds were, as to whether the bonds were hypothecated, all of them?

A. As I remember it, it was always going to be; in two or three days' time there would be something to come up whereby you could raise money to pay this claim.

Q. To recall your recollection to the distinct demand which you made for security and your inquiry as to where the bonds of the company were, what information did you receive at any of those interviews?

A. Well, I don't remember now what it was; I never could get any satisfactory information.

Q. Were you not distinctly informed that there could not be any bonds delivered to the Cleveland Rolling Mill Company for the reason that they were all then hypothecated?

A. Yes; I think that you did say they were tied up in some way, but in a few days there would be arrangements made.

Q. That I was undertaking to negotiate either to loan or to sell the bonds, and that would relieve them from the pledge so as to pay the debt; wasn't that always it?

A. Yes; it was to that effect.

Q. Now, recalling your recollection to the spring of 1883, do you remember my having told you a little prior to that that I was negotiating a loan from Drexel, Morgan & Co. on a pledge of the bonds?

A. Yes, sir.

Q. I did tell you that?

A. Yes, sir.

Q. Do you remember coming in very shortly after that and I telling you that I had secured a loan from Drexel, Morgan & Co. on the securities?

A. Yes, sir.

1247 Q. Do you remember my telling you to make a bill covering a certain amount of shipments of the rolling-mill company and that I would have that paid?

A. Yes, sir

Q. Look at that and state whether that is not the transaction referred to in that interview (handing to witness paper marked Complainant's Exhibit 2)?

A. Yes, sir; it is.

Q. That is your signature at the bottom of that receipt, isn't it?

A. Yes, sir.

Q. For the payment of that amount—$22,634.36—you received, did you not, a check signed by me on Drexel, Morgan & Co. that you took around and had endorsed or countersigned by Roswell Miller?

A. Yes, sir; I did.

Q. And you remitted that amount of the check on Drexel, Morgan & Co. that I have told you came out of this loan to the Cleveland Rolling Mill, didn't you?

A. Yes, sir; I did.

Solicitor for complainant offered in evidence the paper referred to marked "Complainant's Exhibit 2."

Cross-examination by Col. COOPER:

Q. I wish you would look at the statement which is marked Exhibit H to the deposition of W. G. McMillan and state whether the credit under date of March 26th, 1883, of $22,634.36 is the credit that you have been inquired about on your direct examination?

A. Yes, sir; that is the same amount that I received.

1248 Q. That left a balance due of how much at that time?

A. Well, about thirty thousand dollars.

Q. Did you have anything to do with any subsequent sales of iron, or were there any subsequent sales of iron?

A. There were no subsequent sales of iron to this road by me for the Cleveland Rolling Mill Company.

Q. This statement (Exhibit H) is made up of interest upon that balance, as I see; no subsequent sales made?

A. The money paid me was simply for the face of the bills.

Q. For the face of the bills up to what time?

A. The shipments of November 14 to 28th, inclusive.

Q. At that time there had been other shipments made, had there not?

A. Yes, sir.

Q. Aggregating——

A. Over fifty thousand dollars was the total amount of the bill.

Q. Did you have any talk with Mr. Crawford at any of these interviews, when you went to get your money, as to the correctness of the bills?

A. There was no question about the bill.

Q. Did you know anything about the affairs of the Chicago & Great Southern Railway Company at that time, as to how Mr. Crawford was connected with the road; at any time up to the time you received the payment on the 24th of March, 1883, of the twenty-two thousand odd dollars?

A. No; I only had my own idea about it; that is all.

Q. As to his right to the bonds and how he got them, you had never any information up to that time, had you?

A. No, sir.

1249 Q. As I understand from you, all you had to do with this matter was to make the sale as a broker for the Cleveland Rolling Mill Company, and then try to collect the money due on them?

A. Yes, sir.

Mr. Crawford: You sent the original check on Drexel, Morgan & Co. to Mr. Chisholm, didn't you?

A. Yes; I sent the same check that I received.

Col. Cooper: Did you make any explanation to the Cleveland Rolling Mill Company as to how this money was obtained, do you remember?

A. Yes; I wrote a letter explaining how I received it.

Q. But how Mr. Crawford had raised the money; did you make any explanation as to whether he had raised the money by hypothecation of these bonds, or not?

A. Yes; I have written a great many letters to Mr. Chisholm, and in this particular case Mr. Crawford had told me that he was negotiating with Drexel, Morgan & Co. for another loan, and when he received that he would pay the Cleveland Rolling Mill Company the amount of their bills; and instead of paying the full amount, he paid that much.

The signature of the witness to the above deposition was waived by agreement of counsel.

1250 Solicitor for defendants notifies solicitor for complainant to produce the letter of instructions on Thursday at 11 o'clock, before the commissioner, of Henry Crawford to George W. McDonald, given to McDonald, as testified to by him, on or about the 18th of February, A. D. 1884.

Solicitor for complainant says that he has no such document in his possession, and that the complainant has no such document in his possession, and, from what information he can get from inquiry, no such document ever existed.

Col. COOPER: I will ask then the solicitor for complainant as to whether he simply wants to raise the question as to whether that is true or not, the statement of McDonald.

Mr. GARDNER: If so, we will bring our testimony to prove it was not so; that is the way we will get at that.

Col. COOPER: Am I to understand solicitor for complainant puts his answer to my request on the ground that he denies the truthfulness of McDonald's testimony?

Mr. GARDNER: So far as our information goes we are led to believe that no such document ever existed.

Col. COOPER: But that the testimony itself is competent without reference to the question whether it is true.

Mr. GARDNER: If the court decides that it is true, of course then it will be competent.

1251 It is agreed that Mr. Kimball is to state the length of the road from Fair Oaks, the northern terminus, to Attica; the length of the road from Attica to Yeddo, and the distance from Yeddo to Brazil.

It is agreed that the letter of E. W. Tollerton, attorney for the Smith Bridge Company, to H. H. Porter, of date about December 5, 1884, enclosing what is purported to be a contract of the Smith Bridge Company with the Chicago & Great Southern Railway Company, may be introduced in evidence with that purported copy, for the purpose of showing only that Mr. Porter received it with that letter before December 10, 1884; and also the letter of Mr. Porter to E. W. Tollerton in reply.

And it is further stipulated that the signature to that contract on the part of the Chicago & Great Southern Railway Company, H. Crawford, Sr., on the original contract was "H. Crawford, Jr., secretary and treasurer." The original contract is signed by H. Crawford, Jr., and was sent by H. Crawford, Jr., to the secretary of the Smith Bridge Company, and he acknowledged the receipt thereof to H. Crawford, Jr., and sent the duplicate copy signed by that company.

Adjourned to Thursday, November 19th, 1885, at 11 o'clock, a. m.

1252 THURSDAY, *November 19th*, 1885.

Parties met pursuant to adjournment at 11 o'clock a. m.

Present: Same as before.

Solicitor for defendants introduces in evidence a certified copy of the proceedings of the commissioners court for Benton county, in the State of Indiana, relative to the vote in aid of the Indiana and Chicago Railway Company, the name of which was afterwards changed to the Chicago and Great Southern Railway Company, and all proceedings with reference to the collection of taxes, levy, assessment, and the payment of the money collected to the Chicago and Great Southern Railway Company, which is hereto attached, marked "Exhibit 2."

Solicitor for defendants also offered in evidence so much and such parts of the records. including papers on file, and the orders of court in this cause of Henry H. Porter against the Chicago and Great Southern Railway Company and others, consolidated, as may be material, relevant, and competent evidence on the hearing of the matter upon which this testimony is now being taken, such record and papers not being present before the commissioner, but on file in the court in Indianapolis, Indiana.

Solicitor for defendants also offered in evidence certified copies or transcripts of judgments obtained against the Chicago and Great 1253 Southern Railway Company by the Cleveland Rolling Mill Company; Wirt D. Walker, Fitzsimons & Connell, Volney Q. Irwin, the transcripts of the two judgments afterwards merged in the judgment of Wirt D. Walker against said railway company, Oliver Brothers and Phillips, H. B. Scott & Co., and transcripts of all other judgments against said railway company now on file among the records of this cause, or wherein the parties as such judgment creditors have filed transcripts of their judgments in this cause.

Which evidence was objected to by solicitor for complainant as irrelevant.

WILLIAM A. STARIN, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. State your name, age, occupation, and residence.

A. William A. Starin is my name; twenty-eight years old; I do not consider myself actively engaged in business at the present time; I live in Chicago.

Q. Were you one of the directors of the Chicago and Great Southern Railway Company?

A. Yes, sir.

Q. When were you elected a director, and where?

A. I was elected a director in the Great Southern road in the month of March, 1882, at Goodland, Indiana, I think.

1254 Q. Were you present as such director at the meeting of the board of directors recorded in the record-book on pages 86 to 102 inclusive?

A. (Witness refers to record-book.) Yes, I was present at the meeting of the board held on the 18th of March, 1882.

Q. The record recites that at that meeting you were elected president—was that the case?

A. Yes, sir.

Q. Did you know, prior to the meeting, that you were to be elected president?

A. Only a very short time prior to it.

Q. How long?

A. I don't know that I can state the time exactly. I can state the circumstances.

Q. State the circumstances.

A. It was only just previous to the meeting that I became aware of Mr. Crawford's desire that I should be made president of the road.

Q. State what the circumstances were.

A. If I recollect correctly, Mr. Crawford sent word to me in my office, which was on the same floor with his, removed but two or three doors from his office, that he wished to see me, and on going into his office he stated to me, in a few words, that it was his desire to resign as president of the Great Southern road, and that the board of directors would elect me president. That was about all the conversation that occurred prior to my election as president.

Q. Did he say anything to you as to the reason why he was going to resign as president and have you elected in his stead?

1255 A. At the same time that he stated to me that it was his desire that I should be elected president of the road he stated that he had prepared a construction contract for the construction of the Great Southern road, and that he could not—I don't know that he stated it in these words precisely, but that was the effect of it—that is, he gave me to understand that he did not desire to be president of the corporation and at the same time have a contract for the construction of the property owned by the corporation.

Q. Did he present you a construction contract drawn up?

A. Yes, sir.

Q. Is that the same one recorded in the record-book showing the proceedings of that meeting of March 18, 1882, or a copy of it?

A. I have never seen but one construction contract between the Great Southern road and Mr. Crawford. I have not read the contract that is recorded here, but I have no doubt that is the contract that was submitted to the board that day, as spread on the records here.

Q. Did Mr. Crawford give you that?

A. Yes, sir.

Q. What did he say he wanted done with it?

A. Why, he stated that he had a construction contract there between himself and the Great Southern road, and it was his desire that the board of directors of the Great Southern road should approve, ratify, and confirm this contract.

Q. Did he say anything to you about the mortgage?

A. I think he stated that he desired the mortgage that the company had executed, or was about to execute, should receive
1256 the approval of the board of directors.

Q. Did he give you a copy of that also?

A. I am not certain whether he gave me a copy of the mortgage at that time or not; I presume I had one.

Q. Did he say anything about what action he desired the board to take with reference to the thousand bonds of the Chicago and Great Southern in his possession?

A. I cannot say that he did. In fact I have no recollection of anything connected with the thousand bonds there that was a subject for action at that meeting of the board, although I desire to state that my attention is called to the action of the board here, as shown by this record, but I cannot state now for a certainty that the board did or did not take action in connection with the thousand bonds.

Q. Who initiated the proceedings of the meeting?

A. Well, I initiated them myself.

Q. In accordance with what? What did you have to guide you as to what should be done?

A. Well, I knew in a general way what business Mr. Crawford desired the board of directors at that meeting to do, and I directed the meeting myself with reference to that.

Q. Was it all done as he asked it to be done, as near as you can remember?

A. If my memory serves me correctly Mr. Crawford's son presented his resignation.

Q. Whose?

A. The resignation of Mr. Crawford. Mr. Crawford's res-
1257 ignation as director and president was thereupon accepted.
I believe also that Mr. Crawford's son presented my name to the board for president. That motion was carried; whereupon I stated to the board that a construction contract had been entered into with Mr. Crawford, and I read the contract from beginning to end before the board.

Q. What was done then?

A. I think I mentioned to the board that a motion to the effect that the contract be approved, ratified, and confirmed would be in order. Some member of the board made that motion and the motion prevailed.

Q. I will ask you what official action, from the 18th of March, 1882, down to the time that you ceased to be connected with the Chicago and Great Southern as president, you took, except as requested by Mr. Crawford?

A. I might not always have been requested by Mr. Crawford to do what I did do, but Mr. Crawford was always aware of everything that I did do in connection with the Great Southern road.

Q. At whose instance did you do what you did do as president?

A. It was all done on behalf of Mr. Crawford.

Q. At whose instance did you sign the construction contract?

A. The contract had been approved by the company, and I signed the contract on behalf of the company as its president.

Q. Do you remember any other official action you took as president while you were president of the company?

A. Yes.

Q. What? Go on and state generally, Mr. Starin, what you did as president of that company.

1258 A. Well, among other things, in the spring of 1883, early, I think, I signed on behalf of the company as its president the last million dollars of its bonds. I think those bonds were numbered from 1001 to 2000, inclusive.

Q. At whose instance did you do that; at whose request?

A. At the request of Mr. Roswell Miller, I think. Mr. Crawford stated to me that Mr. Miller desired me to sign those bonds. I understood that the bonds were to be placed in Mr. Miller's hands, but were not to be authenticated by the trustee. They were to be placed in his hands simply for the purpose of placing all of the bonds that the Great Southern road had issued in the hands of Mr. Miller as trustee for Drexel, Morgan & Co., and for no other purpose, as I understood.

Q. That was a matter done with the approval of Mr. Crawford, was it not?

A. I think Mr. Crawford stated to me that Mr. Miller desired that I should sign those bonds as a trustee for Drexel, Morgan & Co. I went over to Mr. Miller's office and signed them.

Q. What other official act did you do as president of the company? State from your memory.

A. I think I signed a few of the stock certificates of the company that were issued to various municipalities in Indiana who had voted aid to the railroad; what the amount of those certificates was I do not remember.

Q. That was in the spring of 1882, you think?

A. I will not say when I signed those certificates; they were signed some time between the spring of 1882 and the spring of 1883.

1259 Q. At whose instance did you sign those?

A. That was at Mr. Crawford's request.

Q. What other official action did you take as president of the company?

A. Well, I presided, I think, at one or two meetings subsequent to the meeting of March 18th. I think I presided at the meeting of January 29th, 1883.

Q. Had you or not ceased to be president at that time, January 29th, 1883?

A. No, sir; I had not ceased to be president until April, 1883.

Q. Where was that meeting held, the one of January 29th?

A. It was held in Chicago. I think it was held in my room. The meeting of March 18th, 1882, was not held in my room, but I think the one of January 29th was.

Q. At whose instance, do you know, was that meeting called, the one of January 29th?

A. It was called at the instance of Mr. Crawford. I did not know what the business of the meeting was to be until a few minutes before the meeting was called. The business of that meeting, I think, was to have the board approve of the location of the line, or a relocation rather, in Newton county, and I had forgotten the action, but I notice by the records here that the consolidation of the Block Coal road with the Great Southern Company was also a matter brought before that meeting.

Q. What other official action did you take, as far as you remember, as president of the company?

A. I cannot state that as president, but while I was vice-
1260 president of the company, I think at the request of Mr. Crawford, I opened a correspondence with Mr. Adams of New York, having reference to a car trust that Mr. Crawford desired to consummate. That was as vice-president. Mr. Adams came on to Chicago, and his negotiation from that time was with Mr. Crawford.

Q. You were the attorney for the creditors in the Hack suit—that is, for the original complainants, were you not?

A. Yes, sir.

Q. I wish you would go on and explain your connection with that matter.

A. In October, a year ago, October, 1884—I think it was the 27th—Mr. Crawford sent his colored man over to our offices here in the Bordon Block, and the man stated that Mr. Crawford wished to see Col. Cooper or myself. I mentioned the matter to Col. Cooper, and he requested me to see Mr. Crawford and find out what he wished. I went to see Mr. Crawford——

Q. Mr. Starin, let me caution you. If you were employed by Mr. Crawford as the agent of these people you can just state your employment; but what was said between you and Mr. Crawford would not be proper.

A. I can state the exact circumstances.

Q. I will ask you this question: Was it or not in pursuance of your conversation with Mr. Crawford and arrangements made with him that you filed the bill.

A. In part, yes, but at the same time I telegraphed to Indiana, or had Mr. Crawford's son telegraph to Indiana, to one of the
1261 complainants named in the bill whom I represented.

Q. At the time that bill was filed there were creditors threatening to seize the property, were there not, under execution?

A. That was what I understood from Mr. Crawford.

Q. That was the fact, wasn't it?

A. I think so; yes, sir.

Q. And the bill was filed for the appointment of a receiver to prevent that—to prevent the property from being dissipated?

A. As I understood from Mr. Crawford that was the object of the receivership. It was the preservation of the property for the benefit of the creditors, so that one creditor should not obtain a preference over another by reason of having secured a judgment or otherwise.

Cross-examination:

These questions are asked by Mr. Henry Crawford.

Q. How long had you been in my employ prior to March, 1882, and in what capacity?

A. My connection with Mr. Crawford dates from September, 1879. During that time, and from February, 1880, I was connected with the Chicago and Indianapolis Air Line railway, of which Mr. Crawford was the originator, and was employed with that enterprise, in connection with it, until June, 1883.

Q. During that time, and continuously down to July, 1883, were you not in my employ in the highest confidential capacity, with power to make contracts in my name, to draw checks to un-
1262 limited amounts upon my bank account, and to transact practically any and all business, as far as detail was concerned, in which I was engaged.

A. I would answer by saying that I certainly was employed by Mr. Crawford in the highest confidential capacity. That so far as drawing checks was concerned upon his private bank account, although I never had any general authority from Mr. Crawford so to do, either written or otherwise, at times Mr. Crawford's bank recognized my authority so to do, either from instructions from him or otherwise; so far as transacting the details of the business in which Mr. Crawford was engaged, I presume I had authority to make such transactions, for I certainly did make such transactions. So far as making contracts in Mr. Crawford's name was concerned, I think I never made any for him without due consultation. Matters of small affair, the details o which I knew he did not care to be bothered with, of course I did not always bring to his attention.

Q. How much was disbursed by you as treasurer for my account in the construction of the Chicago and Indianapolis Air Line?

A. I will state exactly my connection with the funds used in the construction of that enterprise. Mr. Crawford was originally its contractor. In February, 1881, Mr. Crawford entered into arrangements by which Mr. Shumway should disburse the construction funds of that company. I disbursed for Mr. Shumway as such trustee, Mr. Shumway being trustee for Mr. Crawford and other
1263 parties who were furnshing money in the enterprise, I think, about $2,300,000. That is to say, the debits against me during that time aggregated that amount.

Q. Wasn't I engaged during the years 1881 and 1882 in the general practice of the law, as well as in matter of railroad construction both on the Air Line and Great Southern?

A. I think in those years Mr. Crawford had a large amount of legal business on his hands outside of his railway construction matters.

Q. So far as the matter came within your personal knowledge, wasn't practically all of the detail work of expending money upon the Great Southern road, and making contracts for supplies and material, and overseeing the grading, substantially all done by subordinates, without any special supervision or attention, so far as I was concerned, to the detail of it, until some time in the spring of 1883?

A. I think, so far as the supervision of all those matters was concerned, Mr. Crawford's son, Mr. H. Crawford, Jr., superintended all of them. Mr. Crawford's affairs in connection with the Great Southern road and its construction was certainly, during that period, superintended by Mr. H. Crawford, Jr.

Q. You don't mean by your reply to state, do you, that up to 1882, in March, that my son had anything to do with the supervision of affairs, do you?

A. I will say that from the fall of 1881 to the spring of 1882 Mr. D. H. Conklin, I think, was in charge of the affairs of construction of the Great Southern road—that is, Mr. Conklin represented
1264 Mr. Crawford's interests in the Great Southern road so far as
they then existed.

Q. I call for an answer to the question as to all of it; that is not a response to the whole question.

(Question read by the commissioner.)

A. I think Mr. Crawford was at all times fully acquainted with the details of the construction of the Great Southern road, although, of course, naturally, in its construction, numbers of subordinate were necessarily occupied and employed.

Q. What part did you personally have in the purchase of ties, timbers, rails, and other supplies in the last part of the year 1881, for construction purposes, and in paying for the same?

A. I think so far as the purchase of all the steel rails was concerned, which entered into the construction of the road, Mr. Crawford himself conducted all those negotiations.

Q. Now as to the payment on that same branch?

A. As to the payment for steel rails used in the construction of the road, I think Mr. Crawford must have given checks himself; I don't now remember that I ever drew a check in payment of steel rails used on the Great Southern road.

Q. Now as to the ties?

A. As to ties, I think I conducted some preliminary negotiations with Miller & Christy, of Chicago, and that they furnished some ties in the construction of the road; how many I don't now remember. As to their payment, I do not now distinctly re-
1265 member whether Mr. Crawford or myself drew the checks.
If Mr. Crawford was in Chicago he undoubtedly drew the checks for them himself. If he was in New York or away it is likely that I drew the checks in his name.

Q. Didn't you go to Michigan and make several large contracts with Willard and others for ties for the Chicago and Great Southern Railway Company?

A. No, sir; I went to Michigan in the spring of 1880 and made contracts with W. F.——

Q. I am not asking you anything about 1880. I am asking you about the Great Southern, whether you ever made any contract up in Michigan with Willard or other parties there for ties furnished to the Great Southern road in the fall of 1881, that were delivered at Michigan City and inspected from time to time by W. W. Perkins?

A. The occasion of my going to Michigan to purchase ties was in 1880. I never went to Michigan and made any purchase at any other time. In 1881 or '2 Mr. Willard, I think, did furnish some ties for the Great Southern road, delivered in Michigan City. I think it likely that the preliminary negotiations in relation to their purchase were carried on by myself; it is possible I myself signed the contract, although I do not now remember; if so, it was done after due consultation with and approval by Mr. Crawford. In addition I would say that I think that I personally engaged Mr. Perkins to inspect these ties, and they were landed at Michigan City;
he had previously been engaged by the Air Line road in a
1266 similar employment, and I engaged him likewise for the
Great Southern.

Q. What was your habit when you personally made a payment on a voucher; was it not to stamp upon that voucher the impress of a stamp that designated that you had personally transacted the business and made the payment?

A. So far as the Chicago and Indianapolis Air Line matters were concerned, I always stamped all vouchers. So far as the Great Southern road was concerned, I don't think I ever had a stamp. It is possible I may have stamped some of the Great Southern vouchers with the stamp used on the Air Line. Whenever I paid a Great Southern voucher something on the voucher would indicate that I had transacted the business; that is very true.

Q. You never had any stamp of that kind for the Great Southern, did you?

A. No; I never had a separate stamp.

Q. But whenever you personally attended to the payment of a voucher you put, did you not, that "Paid. W. A. Starin, treasurer," stamp on the Chicago and Great Southern Company voucher?

A. I didn't always do it. I always intended to do it.

Q. That was the custom?

A. I always intended to do it.

Q. So that every voucher of the Chicago and Great Southern that bears your impress has been personally managed and paid by you, hasn't it?

A. Yes, sir.

Q. Be good enough, Mr. Starin, to refresh your recollection and
state whether, during the year 1882, I was not nearly all the
1267 while absent from Chicago. Refreshing your recollection
somewhat, you probably recall that twice in that year my
family had affliction prior to the summer. Is that correct? And that in the fall and winter of 1882 I was continuously in New York for three or four months on the reorganization of the Chicago and Western Indiana railway?

A. Mr. Crawford was certainly away a very large portion of the time in 1882, and when in the city, especially during the summer months of 1882, was able to give but very little attention to busness. I recall distinctly Mr. Crawford's being absent for a protracted period in 1883 in New York—in the fall, I think—in connection with the reorganization of the Western Indiana railroad.

Q. During that period was not, Mr. Starin, practically the whole business of managing and supervising the construction that was going on on the Great Southern road left entirely to subordinates, with nothing except the most general information given of the occurrence of events to me when I occasionally returned home?

A. During that time I should say that it was. Mr. Crawford being absent in New York, necessarily the details were carried on by subordinates.

Q. Prior to March, 1882, the work of construction, so far as the management down in Indiana was concerned, had been under the management of Mr. Foster, the president, had it not?

A. Prior to March, 1882, it had been, I understood, although, as I have before stated, from the fall of 1881 until the spring of
1268 1882, Mr. Conklin was also there representing Mr. Crawford.
How much of the construction affairs were attended to by Mr. Conklin, representing Mr. Crawford, or by Mr. Foster, I have no means of knowing.

1269 Q. The custom in constructing the Chicago & Great Southern was, was it not, Mr. Starin, that for every payment made a voucher was taken?

A. That was the custom so far as any transactions I made in behalf of the company was concerned.

Q. Or that you know of, isn't it?

A. Or that I know of, certainly.

Q. In all of those vouchers, were there any fictitious prices stated or was the exact amount of the transaction put into the voucher and paid, without commission or anything else?

A. So far as I know, the exact price was always placed in the voucher.

Q. You never attached your approval to a dishonest or enlarged voucher, did you?

A. Not that I know of, certainly.

Q. Did you ever know of such an occurrence as that during the history of the Great Southern road?

A. Why, no.

Q. The vouchers therefore will, so far as you know, then thoroughly and honestly present the actual cost of that work, will they?

A. Why, certainly, sir; they ought to.

Q. Prior to March, 1882, at the meeting where there was a new board of directors elected, you had a very intimate and close knowledge, did you not, of what my interest in the Chicago & Great Southern Company was, as fully as I knew it myself, and what its condition was?

A. I did not know the exact nature of Mr. Crawford's contract with Mr. Foster; I understood, however, in a general way that Mr. Crawford expected to absolutely control the enterprise that
1270 Mr. Foster had originated. How large Mr. Crawford's inter-

est was to be, or how large Mr. Foster's interest was to be in the enterprise itself, I did not know.

Q. Do you mean to be understood that prior to March, 1882, you had never seen my contract in writing with Mr. William Foster?

A. I don't think I had ever seen it.

Q. Did you make the first prime payment on that contract of $5,000, and isn't that payment endorsed in your own handwriting with six or eight lines of writing on the main contract?

A. I remember this much: So far as——

Q. Please state first in answer to the question after your recollection is refreshed.

A. I remember making the payment and the occasion of Mr. Crawford's calling me in his office when Mr. Foster was present. I remember, I think, drawing a check for this amount. So far as making the endorsement is concerned, I don't now remember it; but I am positive, or at least I have no recollection of ever having read the contract itself, although, as I now state, it is possible I made the endorsement. I do not remember ever having read Mr. Crawford's contract with Mr. Foster.

Q. Do you mean to say that I called you into my room and asked you to give a check, when I was in Chicago, to pay an obligation of mine?

A. I mean to say this: I think that at [that] time I had some funds of Mr. Crawford's in my hands. I will not now state posi-
tively whether I drew the check or otherwise; it is possible
1271 Mr. Crawford drew the check, and I went to the bank and
got the money. I remember there was a transaction of that sort in connection with the $5,000 that was paid to Mr. Foster at that time. I could not now state without examining my old check-books; it is possible I could not then, as probably some of those books are in the possession of Mr. Crawford—that is, the Air-Line books—whether I drew the check or whether Mr. Crawford drew it; I had something to do with the money; it is likely I went to the bank and got the money.

Q. Did you not know, prior to 1882, in March, that I had become indebted two hundred thousand dollars to Mr. Dull of the purchase of the stock of the Block Coal road?

A. Yes, sir.

Q. Did you know, prior to March, 1882, that I had gone to New York and hypothecated all of the bonds and all of the stock of the Chicago & Great Southern Railway Company to Mr. Dull on that obligation?

A. I suppose that the bonds and stock of the road were so hypothecated on that obligation.

Q. You knew prior to March, 1882, did you not, that Mr. Foster had signed, and issued, and delivered to you for me a million of those bonds secured by the mortgage to Mr. New, didn't you?

A. I knew that Mr. Foster had executed a million dollars of those bonds while he was president; yes.

Q. And delivered them to you for me in the office, 125 Dearborn street?

A. I do not definitely remember whether the first million dollars of bonds were in our vaults after Mr. Foster executed them or not; it is likely they were.

1272 Q. Didn't Mr. Foster execute them right in Mr. Lyon's room there, that was part of the suite occupied by me?

A. I think he did; I think it is likely those bonds were placed in the vault there; I had a general supervision of all the matters in the office, and they were likely given to me and put in the vault to be taken care of.

Q. The condition of the affairs, then, as you well knew it, was it not, in 1882, in March, when you first became a director of the company, was that the million dollars of bonds that had been issued by Mr. Foster had been by me hypothecated to Mr. Dull?

A. Yes, sir; I suppose I knew it.

Q. You knew, also, that the stock which I had bought of Mr. Foster had been hypothecated to Mr. Dull on some account, didn't you?

A. I will not say I knew; I did not know that all the Great Southern securities, bonds, and stock were to be hypothecated with Mr. Dull. I understood at the time that they were hypothecated—that such had been done; I understood that all the bonds and stock had been hypothecated to secure Mr. Dull for this note of $200,000.

Q. The balance due on it, you mean?

A. I didn't know anything had been paid on it prior to March, 1882.

Q. You were present at Goodland at the meeting in March, 1882, were you not?

A. March 15; yes.

Q. Do you remember a transfer of stock made by me at that time to the persons who were to be made directors?

A. I cannot say that I do, Mr. Crawford.

1273 Q. Showing you a paper now referred to, you may state whether that paper was not executed to your knowledge on the day it bears date, at Goodland, there. To still further refresh the recollection of the witness, I will call his attention to the character of another paper—see whether either of the papers or both refresh your recollection. (Handing two papers to witness.)

A. I will state that, so far as this assignment of stock is concerned, I have no recollection concerning it, although I may have seen it at the time. I have no recollection concerning it now.

Q. It is made, is it not, Mr. Starin, upon the same peculiar kind of paper on which you executed a paper of the same date at that place? (Handing paper to witness.)

A. It appears to be; yes.

Q. Mr. Starin, I desire to call your attention to an allegation in a certain answer that "on the — day of ——, 1882, he (meaning Mr. Crawford) elected the following persons directors of said company, to wit, William A. Starin, Henry Crawford, Jr., D. J. Lyon, C. E. Worden, D. H. Conklin, Frederick F. Lacey, and G. W. McDonald; they constituted seven of the nine directors authorized by the said

company, and formed its board. All of the persons named were his
friends, kindred, employees, and servants, and constituted a ruling
majority in all the meetings of said board. They were all subject to
his personal control and domination, so far as their official actions as
directors were concerned, and were elected and qualified
1274 under the promise and agreement to carry out the wishes of
the said Henry Crawford in and about the premises." Please
state whether the averment therein contained that you were elected
and qualified as a director of the Chicago & Great Southern Railway Company under the promise and agreement to carry out my wishes in and about that matter is true or is untrue.

A. There was never any promise or agreement so far as that is concerned.

Q. There is an allegation in this answer that on the 18th of March, 1882, no work had been done upon said line of railroad of any value." Is that allegation true or false?

A. It is not true; the person who drew that answer was ignorant, I should think, of the situation.

Q. Recalling your recollection to the corporation that was originally known as the Indiana & Chicago Railway Company, it had no chartered power to build a railroad south of Attica, did it?

A. That is my recollection, that it had no power to build a railroad south of the bank of the river there.

Q. At the southern terminus? Its southern terminus was Attica.

A. The southern terminus was Attica; I think that was specified in its articles of incorporation; that is my recollection.

Q. In March, 1882, had not the road been entirely completed and cars running over it from Oxford to Goodland, and north of Goodland?

A. I think it had, although I will say here that I never
1275 was at Goodland but once in my life, and that was the occasion of the meeting of the 15th of March, and I never went
over the Great Southern road; I think the road was completed between Goodland and Oxford, and for some miles beyond Goodland.

Q. You were asked by Col. Cooper a question with regard to the recital that appears in the record-book under date of March 18, 1882, and the form in which the question was put to you was as to what action the board did take with regard to a million of bonds then in my possession, and you made a response to it, probably without noticing the exact phraseology of the question.

A. I presume I did; yes.

Q. You knew, did you not, that the bonds were not then in my possession, but had been hypothecated previously, as you have hitherto testified; is that correct?

A. I will state that it is my recollection that on the 18th of March, 1882, the first million of bonds of the Great Southern road were not in the actual manual possession of Mr. Crawford, but were in the possession of some party holding the Dull note.

Q. Look at the paper now shown you and state what it is (handing paper to witness).

A. It appears to be the original construction contract between Mr. Crawford and the Chicago & Great Southern Railway Company.

Q. Is that your signature there?

A. Yes, sir.

Q. When you executed that contract, were you aware, Mr. Starin, that you were committing fraud on anybody, or did you intend thereby to commit a fraud on anybody.

1276 A. No, sir; I certainly had no thought of that kind.

Q. Were you asked or solicited by me or was it suggested by me that you and I were engaged in an act to cheat or defraud anybody out of their rights by that paper?

A. No, sir; or I certainly should not have been a party to it.

Q. Were you in the sense set out in this petition my creature in signing that paper?

A. No, sir; I am no man's creature, and never have been; never will be.

Q. You executed that contract freely and of your own volition without any improper solicitation upon my part, did you?

A. Why certainly.

Q. You used the expression probably inadvertently in regard to this mortgage that is pasted in the record book under the date of March, 1882, as a mortgage about to be executed?

A. Was that my expression?

Q. You used at least that expression; it may have been coupled with something else?

A. What is the date of the mortgage?

Q. The date of the mortgage is the first of November, 1881.

A. It had been executed; whatever my answer was there, as I understood on the 18th of March or up to that time, that mortgage had never been approved, ratified, or affirmed by the board.

Q. That is, in a formal way?

A. And its formal action was requested at that time, and was desirable; that is all there was to it.

Q. Now, as a matter of fact, didn't you know it had been authorized by a previous meeting while Mr. Foster was president 1277 and that Mr. Foster had actually signed it and acknowledged it and it had been recorded, and that bonds were issued under it?

A. Why certainly; it was simply a formal act of approval that was desirable on the 18th of March.

Q. So as to spread it at large upon the records?

A. Yes, sir.

Q. That was all, wasn't it?

A. I suppose that was it.

Q. Do you remember whether on the 18th of March, 1882, I had not transferred in writing the contract whereby I was to purchase the Block Coal road to the Chicago & Great Southern, as recited in these minutes?

A. I don't think I ever saw a formal transfer of the Block Coal contract to the Great Southern road. If it had not been done I knew from my knowledge of the situation that it would be done, and so I did not trouble myself about it.

Q. Mr. Starin, I will ask you a general question with regard to all the matters which you did while you were president of the Chicago & Great Southern Railway Company, as to whether or not, at least so far as they were formally concerned, to your knowledge they were regular and proper [in] form and shape?

A. I know that Mr. Crawford desired always to observe formality in all proceedings of the board of directors. In fact I was as much interested in having the proceedings regular as he was himself; I stood as president of the company; I wanted to have the record proper and in due form. Although the record was not in my hands
and was under the control of Mr. Crawford, I suppose that the
1278 proceedings of the board as they were held would in due season be placed upon the records which were in Mr. Crawford's
charge; that he would see to their formality. So far as the conduct of meetings was concerned, I endeavored as far as possible to observe those matters that usually prevail upon such occasions.

Q. You speak about the record being under Mr. Crawford's custody; was not everything that was in Mr. Crawford's custody during your entire experience with him open equally to everybody else that came in the office, Mr. Starin? Did you ever know me even to have the combination of the vault in my office or know how to get into the vault?

A. I will say, so far as Mr. Crawford's acquaintance with the vault combination was concerned, I don't think he ever knew anything about it. So far as this record-book was concerned, it was in charge of Mr. Lacey or Mr. H. Crawford, Jr., and I don't think I saw it more than once or twice while I was in the office.

Q. It was open to your examination always when you did desire to see it, was it not, Mr. Starin. There was no attempt to conceal anything or anything of that kind, was there ever?

A. I requested Mr. Lacey once or twice to let me see the record-book; I believe he stated it was not in the office; it was at Mr. Crawford's house or elsewhere. I tried two or three times to examine the record because I was naturally a little interested in seeing that the record had been properly written up; I did not know whether
Mr. Crawford had written it up or Mr. Lacey. I did not con-
1279 sider Mr. Lacey competent to write up any record, so far as
he was concerned.

Q. Did you ever call my attention personally to the fact that you wanted to see the record-book and did not see it?

A. I don't think I ever did; I know I never did; but I will say this much: I endeavored to get hold of this record-book because I wanted to see it and see what shape it was in. Mr. Lacey never permitted me to see it; I never got hold of it.

Q. As far as you know or remember, does that record-book, so far as your transactions were concerned and the meetings, recite the truth, or does it not recite the truth?

73—1280

A. I will state, Mr. Crawford, that I have not carefully examined this record. I notice here one matter that I think is a mistake.

Q. Please point it out.

A. I notice in the record-book, at page 105, the proceedings of a meeting of the board of directors held at Goodland, Indiana, May 1, 1882, are recorded. Among other things the record recites that I was present at that meeting; that is a mistake, because I never was at Goodland but upon one occasion, as I have before stated, on the 15th of March.

Q. I have not the book before me—was there anything done at that meeting except to meet—what was done?

A. I find I was elected president on that day again, and that is about all there was done; that was the only business.

Q. Outside of that do you see there, on examination, anything else that is not correct?

A. As I have said, I never examined the record carefully,
1280 but that is a mistake. I am not aware of anything which the
record presents wherein I myself was concerned; that there
is any other mistake from the cursory examination I have made of the record.

Q. While you were president of the company was Mr. Henry Meiselbar a director?

A. I think he was; yes.

Q. Didn't he from time to time appear at meetings of the board and sit as a member of the board?

A. From my own recollection, so far as that matter is concerned, I would say that it is my impression that he was present on the 18th of March, 1882, when the meeting was held in Mr. Lyon's office; I think I recall his being present at that time, but as to his presence at subsequent meetings I have no distinct recollection.

Q. Were you present at the meeting of January 29, 1883, as recorded on page 106 of the records?

A. Yes; I was present; that is the time of the relocation.

Q. And also of this supplemental deed of further assurance and the consolidation.

A. Yes; I was present at the meeting of January 29, 1883.

Q. You may state whether or not, according to your best recollection, Mr. Meiselbar was present at that meeting as a director.

A. I have no personal recollection of that matter. The record here recites that he was present; I have no distinct recollection whether he was or not.

Q. Where was his office at that time?

A. Mr. Meiselbar's office at that time was on the fourth floor of
123 Dearborn street, right across the hall from the railroad
1281 offices occupied by the Air Line and Great Southern Companies.

Q. Wasn't it part of the rooms that were leased by the Air Line?

A. It was one of the rooms that the Air Line leased; the Air Line road leased the entire fourth floor of that building; it was sublet to Mr. Meiselbar.

Q. Sublet as a gratuity or on terms?

A. Well, partly as a gratuity and partly on terms; he paid the rent when he wanted to pay it; I don't think the rent was paid regularly for the last few months.

Q. Now, Mr. Starin, I ask your attention by way of reference to page 131 of the record under date of April 18, 1883, and ask you to state whether you were present at that meeting which authorized the deed of further assurance; you remember, do you not, that that was a matter of great particularity that was being managed under the direction of Messrs. Hendricks, Hord & Hendricks, of Indiana?

A. In connection with the Block Coal road?

Q. Yes.

A. This (indicating) is the deed of further assurance conveying the Block Coal road and making it a part of the mortgage to John C. New.

Q. Yes?

A. Yes; I recollect the action of that meeting because I had just returned from Omaha, I think, that morning; I remember the circumstances.

Q. You were present there, were you not?

A. Yes; I was present.

Q. That meeting was held, wasn't it?

A. April 18, 1883; of course it was held.

1282 Q. Wasn't Mr. Meiselbar present at that meeting, and wasn't his presence necessary to make a quorum?

A. I see there were five directors reported as being present: Mr. H. Crawford, Jr., Mr. Lyon, Mr. Meiselbar, Mr. Lacey, and myself. As I have before stated, I have no distinct recollection of Mr. Meiselbar's being present; the record recites that he was present.

Q. Without him being there, there would have been no quorum, would there?

A. There would not.

Q. You would not have executed the deed of further assurance, would you, as a formal matter, and acknowledged it and sworn to it as the act and deed of the company, without an order of the board made with a quorum, would you, Mr. Starin?

A. No, sir; I should not.

Q. You did execute that deed of further assurance as president, didn't you?

A. I did.

Q. And made oath to it?

A. I did.

Q. And didn't you make oath to it before Mr. Henry Meiselbar?

A. Didn't I take oath to it before Henry Meiselbar?

Q. Yes, as notary public.

A. If I executed the deed it is likely I executed it before Mr. Meiselbar, because he was a notary public and the only one on that floor.

Q. I am stating just what the record shows.

A. The record shows I executed that mortgage.

Q. Before Meiselbar, as notary public, you swore it was the act and deed of the company; was it the act and the deed of the company except by that meeting?

1283 A. It was the proceedings of this meeting that made that supplemental mortgage the act and deed of the company.

Q. And authorized you to execute it?

A. Yes, sir.

Q. And you had no other authority, did you?

A. I should have made no declaration that it was the act and deed of the company unless a majority of the board of directors had concurred in it and approved it.

Q. And it required Meiselbar's presence to make a majority present there, didn't it, as shown by the record?

A. It required five to make a quorum; that is certain.

Q. Mr. Starin, going back a moment to the question of a payment for supplies purchased, you knew, did you not, in the fall of 1881, that the rails and spiles, bolts and ties were purchased here in Chicago and paid for, while the grading was conducted under the supervision of Mr. Foster and Mr. Conkling? Is that correct, as you remember it?

A. Yes, sir; so far as the purchase of material was concerned, I think the purchases of the road were made from Chicago—that is, all important purchases.

Q. And then, for the money necessary to make the payments, didn't either you, as my agent, or I remit the money down there to Mr. Foster or Mr. Conkling; is that true?

A. Mr. Crawford or Mr. Crawford's son or myself, I suppose, attended to such remittances.

Q. Now, again, by refreshing your recollection, don't you know that the payment of nearly the entire amount;that was paid 1284 out in the year 1881 on the Chicago & Great Southern railway, both for ties, rails, spikes, bolts, and splice bars, was made personally by you, and that the vouchers show your personal stamp on nearly every one of them, especially including the Cleveland Rolling Mill claim, through Stubbs & Runyan?

A. I will say this: I think that at that time all or nearly all of the Great Southern vouchers came into my possession. As they came in my possession I usually stamped them. So far as the conduct of the business concerning the purchase of material and the payment of it was concerned, why, I presume I might say that I attended to those transactions, although in some cases Mr. Crawford's check signed by myself and in other cases his own check would be used, myself keeping the vouchers in either event representing such expenditures.

Q. The stamp upon the vouchers would indicate that you personally had the supervision of the transaction, wouldn't it?

A. That I had them in my charge; yes. It would indicate my acquaintance with the transactions, at least.

Q. You spoke about having signed the remaining million of bonds.

A. Yes, sir.

Q. You did that early in 1883, did you not?

A. Yes, sir.

Q. You delivered them personally to Mr. Roswell Miller?

A. The bonds were in his office before they were signed. I think the secretary had attached the seal and his signature before, and I signed them and sent them all over to Mr. Miller.

Q. Mr. Starin, you knew, did you not, and know now, that
1285 from the time you became president of that corporation down to the time you ceased to be president that you never, as president of that company, either paid me a dollar or gave me a dollar of stock for securities of any kind for the money that I put into the road, didn't you?

A. As I have before stated, all the securities of the company were hypothecated for the purchase of the Chicago Block Coal road; I never had any corporate assets in my hand that I paid to Mr. Crawford under his construction contract or otherwise; so far as the finances of the road were concerned, Mr. Crawford was the only person, as I understood, interested in the enterprise.

Q. And wasn't he the only person furnishing any money?

A. Mr. Crawford was the only person who put money into the road, so far as I knew; I knew that Mr. Crawford had succeeded in negotiating a loan of Drexel, Morgan & Co.

Q. That was done upon my personal responsibility—upon my personal paper, wasn't it?

A. Certainly.

Col. Cooper: What, the loan of Drexel, Morgan & Co.?

A. Mr. Crawford's money and the money of Drexel, Morgan & Co. was the only money that I ever knew that went into the road, with the exception of subsidies that were voted in Indiana there.

Mr. Crawford: You knew, did you not, before you ceased to be president of the Chicago and Great Southern Railway Company, that I had borrowed of Drexel, Morgan & Co. a large sum of money and hypothecated the bonds and stock of the Chicago and Great Southern Railway Company that had been issued and
1286 delivered to me, didn't you?

A. Yes, sir.

Q. Was there any concealment made about that among the members of the board, or anybody connected with the enterprise, to your knowledge?

A. I don't know that it was ever brought to the formal notice of the board; I don't see any reason for its having been done.

Q. I ask simply for the fact as to whether or not it was a matter of general public notoriety among the people who were creditors of the road and having business with it?

A. I think it was generally known among the creditors of the road and others who had negotiations with it.

Q. Take, for instance, the Cleveland Rolling Mill Company. Didn't you have conferences with Mr. Stubbs on that subject, and inform him and all others having claims in regard to the situation of the negotiations?

A. Mr. Stubbs very frequently came to me to see if I could give him any information as to the progress Mr. Crawford was making in financing his road, and if I knew anything definite, why, I presume I told it to Mr. Stubbs.

Q. You did know definitely, didn't you, that I had made a loan of Drexel, Morgan & Company?

A. When it was consummated I knew it, but I mean what I have before stated here, that as the matters were progressing from time to time Mr. Stubbs frequently came in to see me, and so far as I was advised I would tell him how Mr. Crawford was situated financially.

1287 Q. Do you remember Mr. Miller, or Christy & Miller, having quite a claim that was past due at the time this Drexel, Morgan & Company loan was negotiated?

A. I think they had; yes, sir.

Q. Don't you remember, Mr. Starin, that the second check that was drawn on Drexel, Morgan & Co.'s account was a check for over $11,000 to pay Miller & Christy for ties that had been delivered—shipped down to Fair Oaks?

A. It is my recollection that among the first of the creditors of the road who received money from the Drexel, Morgan & Co. funds Miller & Christy were parties.

Q. Don't you know that they knew by direct information from you that that money was derived from Drexel, Morgan & Co., and obtained by me by a pledge of the stock and bonds of the Chicago and Great Southern Railway Company?

A. Mr. Christy is the only member of the firm of Miller & Christy with whom I was ever brought in contact. I will not state that I ever mentioned to Mr. Christy the circumstances upon which Mr. Crawford had raised money from Drexel, Morgan & Co. It is likely I did so state to him, as I would have stated to any other creditor of the road to a large amount whom I thought had a right to know, as to what were the prospects of procuring his money. I don't recollect of having any special conversation with Mr. Christy upon that point.

Q. Mr. Starin, you remained, did you not, in the office until about July 23rd or 24th, 1883?

A. July 24th, 1803, I think.

1288 Q. You are familiar, are you not, to a very full and precise extent, as to the method in which that Drexel, Morgan & Co. loan was carried out; was any of that money paid to me?

A. I think I am familiar with the method by which the object of this fund was carried out. Up to the time of my leaving, I don't know that any of this fund came into Mr. Crawford's hands, directly or indirectly.

Q. In the answer here there is this allegation: "After said Crawford had procured the said bonds and stock, he delivered them to Drexel, Morgan & Co., bankers in New York, by the way of pledge for an individual loan of money made by them to him for about the sum of $350,000." You may state whether that allegation there is true or false, to your knowledge?

A. Why, it was an individual loan, as I understood it, because the bank held Mr. Crawford's note for which these bonds were hypothecated as collateral.

Q. Is it individual in any other sense than that?

A. That is the only sense in which it was an individual loan. Some one had to give a note; Mr. Crawford gave his note and secured it by his collaterals.

Q. Now, how was the money disbursed, to your knowledge?

A. The method?

Q. Yes; the method.

A. As I understood, although I do not state for a certainty that I ever have seen the contract between Mr. Crawford and Drexel, Morgan & Co., Mr. Crawford's arrangements with Drexel, Morgan & Co. contemplated that this fund was to be disbursed only upon
1289 the approval of a trustee named by Drexel, Morgan & Co.
and agreed to by Mr. Crawford. That trustee originally was Mr. Roswell Miller, the present general manager of the St. Paul road, and no drafts were made upon the fund except with the approval of Mr. Miller. All drafts were countersigned by Mr. Miller, and every draft was accompanied by a voucher showing for what purpose the draft was made, as I understood it.

Q. So that every dollar, did it not, Mr. Starin, to your personal knowledge, of that Drexel, Morgan & Co. road went actually into the work of construction of the Chicago and Great Southern at the exact prices paid for material and labor?

A. Certainly; I have no doubt but that every dollar represented by voucher and draft on Drexel, Morgan & Co. represented an investment in the road for construction purposes.

Q. I want to ask you also to state as to whether or not it was not at the exact prices.

A. Certainly, sir; the vouchers were receipted by the parties of whom the material was purchased.

Q. There was no friction, then, or enhanced prices or commission or bonus in any of the vouchers, so far as you know, was there?

A. No, sir.

Q. From the beginning to the end of this work?

A. So far as I ever saw the vouchers. As a matter of fact, I saw very few of the vouchers or the drafts that were made on Drexel, Morgan & Co., as I remember it; but I have no doubt but that the money advanced by Drexel, Morgan & Co. on that loan
1290 went into the actual construction of the road or in the pur-
chase of the Block Coal road—$200,000 and interest.

Q. Calling your attention to the year 1883, Mr. Starin, outside of the money that was going into the road at that time procured directly from Drexel, Morgan & Co., you may please state whether you did not personally disburse for my account a very large sum of money in that year from my private funds.

A. Yes; I think, however, that most of the money that I disbursed for Mr. Crawford in 1883 on account of the Great Southern road was in the months of May, June, and possibly a portion of July. I don't recollect the amounts so disbursed. It was my custom to draw Mr. Crawford's check and to take a voucher for whatever amount I drew. I returned these vouchers subsequently to Mr. Crawford, and beyond that I have no record of them. I always endeavored to have a voucher for all the money I expended in Mr. Crawford's behalf.

Q. Did you not in the year 1883 collect for me over $120,000 from the Chicago, Milwaukee and St. Paul Railroad Company, and, outside of what was paid for legal services, did not substantially every dollar of that money go into the construction of the Chicago and Great Southern railway?

A. I collected in May and June, 1883, from the St. Paul Company something over $121,000. The first payment was $50,000. A check had been given to me by the St. Paul Company for that amount, which I endorsed and gave to Mr. Crawford. How much of that $50,000 went into the Great Southern road I cannot definitely
1291 state, as Mr. Crawford disbursed this fund wholly himself.
The balance of the $121,000—$71,000—which was paid in June, a large portion of this amount was disbursed by me to pay the bills of the Great Southern road; how much I could not state, but it is my impression that of the entire amount Mr. Crawford received from the St. Paul Company—the $121,000—the greater portion of it was used by him for construction purposes of the Great Southern road.

Q. Outside of the money from the St. Paul Company, do you not recall, in the last part of the year 1882 and in the year 1883, I collected some very large sums of money for professional services that went into the construction of the Chicago and Great Southern railway?

A. So far as the sums Mr. Crawford collected for professional services — I have no direct knowledge or distinct recollection. Some time, I think, in the year 1881, or the early part of 1882, Mr. Crawford received quite a large sum of money on account of his interests or profits in connection with the Chicago and Indianapolis Air Line road, which Mr. Shumway paid him.

Q. Do you not recall a very important litigation in the summer of 1882, continued that fall, and closed up in the following spring of 1883, in connection with the Chicago and Eastern Illinois Railroad Company, and did you not personally receive, and does it not figure in your accounts with me, a large sum of money received from Perkins, interested in the Chicago and Eastern Illinois Railroad Company?

A. I remember distinctly Mr. Crawford's connection with
1292 that litigation; how much Mr. Crawford received and what
portion of it came into my hands I have no definite recollection. I don't think that any money was ever paid directly to myself on account of Mr. Crawford's legal services.

Q. Do you remember also negotiating a loan upon my wife's residence in the city of Chicago?

A. Yes, sir.

Q. I will ask you to state whether you do not personally know that substantially every dollar of that money went into the construction of the Chicago and Great Southern Railway Company, as appears by your reports in writing to me.

A. A portion of that amount undoubtedly did; how much of it I cannot state. A portion of this amount was likewise used, if my memory serves me correctly, to relieve the property from a prior indebtedness.

Q. Refreshing your recollection on that subject, are you not altogether in error about that latter statement?

A. I will state that the property had been relieved from the prior indebtedness prior to my negotiating the loan from Shortall & Helmer of $16,000; the amount of the prior incumbrance on this property was something over $20,000, if my memory is correct. How much of the $16,000 went into the Great Southern road I could not state without reference to the vouchers given to Mr. Crawford.

Q. If there is an account in writing in which you debit yourself with the entire amount received by you on that loan, and take
1293 credit for vouchers on the Chicago and Great Southern account, that would be better than your recollection, wouldn't it?

A. It undoubtedly would. I will state here that it is my impression that a large portion of that money went into the Great Southern road.

Q. Do you not remember, as a matter of fact, that there was no incumbrance upon the property at all when the Shortall loan was made; that it had been sold out and deed made?

A. I speak of the prior lien on the property only this way: the property had been foreclosed and sold, and a deed had been taken of the property by Mr. Samuel B. Babcock; so that, as a matter of fact, my transaction with Mr. Babcock, in connection with the property, amounted to a purchase of the property from him for Mrs. Crawford.

Q. And that had all been closed up and the money paid, had it not, before the other matter, quite a little while?

A. It had been.

Q. Do you not know, as a matter of fact, that I borrowed Mr. Shumway's bonds of the Wabash, St. Louis and Pacific Railway Company, belonging to him, to use as collateral to borrow money to put into the Chicago and Great Southern Railway Company?

A. I knew that Mr. Shumway had either given Mr. Crawford Chicago Division Wabash bonds, to use as collateral to his note to the bank, or that Mr. Shumway had raised money on the collaterals on his own note and given his money to Mr. Crawford. I know that Mr. Shumway's bonds had been used to procure money for Mr. Crawford, whether on Mr. Crawford's note or Mr. Shumway's I do
1294 not think I was advised; but the money, as I understood from Mr. Shumway, had gone to Mr. Crawford.

Q. Mr. Starin, in this answer, filed in the names of Mr. Swan and Mr. Atkinson, is this allegation: "These defendants show unto your honors that the construction contract made, or pretended to be made, between the said Crawford and the said railroad company is fraudulent and void at the election of stockholders or creditors of the said company." During the entire time that you were connected with the Chicago and Great Southern Railway Company did you ever hear any stockholder or creditor of that corporation make any claim that the mortgage or the bonds were illegal or that that construction contract was illegal or fraudulent?

A. I never had any such question as that brought to my attention by anybody.

Q. During that time?

A. No, sir; it was a matter that was not discussed between myself and any creditor or stockholder.

Q. Was there any secrecy or misrepresentation, so far as you know, about what the exact relations were which existed between myself and the company?

A. I think not.

Q. Was it not known, from the 15th of March, 1882, down to the time you ceased connection with the corporation, that I was the contractor and furnishing the money to construct that line?

1295 A. I don't know that all persons doing business with the company were or were not aware of the relations Mr. Crawford bore toward it. I don't think that this matter was ever brought to my attention by any person doing business with the company. I think all vouchers were paid in the name of Henry Crawford, contractor.

Q. So far as you know, was there ever any secrecy or concealment with regard to the exact relation that did exist?

A. I think not; I think there was no secrecy or concealment. I certainly never endeavored to conceal my relations towards it.

Q. Did you ever endeavor to conceal the relations which I bore to it in any way, or to misrepresent them?

A. Whenever I was asked I certainly stated what your relations to it were if——

Q. And exactly as they were?

A. If that question was ever put to me.

Q. Very soon after you were elected president wasn't the correspondence that issued from the office here in Chicago on letter-heads on which you appear as president of the company?

A. I know there were letter-heads printed with my name on as president.

Q. Similar to the one now shown you (exhibiting paper to witness)?

A. Yes. I might add that this letter (the letter shown witness) is dated July 23, 1883. The original letter-head has on it my name as president. Not being president at that time, I scratched out that.

Q. I simply showed you that for the purpose of seeing the form.

A. Yes, sir.

1296 Q. These letter-heads began to be used or prepared as early as probably the month of March, 1882, didn't they?

A. I presume that these letter-heads, one of which I hold in my hand, were printed shortly after March, 1882, probably very soon after.

Q. Do you know Mr. G. W. McDonald?

A. Yes, sir.

Q. Didn't you have frequent occasion in the year 1882, which you remember was the year when I was very largely away from home, to have correspondence with Mr. George W. McDonald, at Attica, with regard to the affairs of the Chicago and Great Southern Railway Company?

A. I may have corresponded with him; I don't think to a very large extent. Mr. McDonald's relations to the company were much better known to Mr. Crawford, and he was under Mr. Crawford's direction much more than under my own. I don't remember that I ever directed him specifically to attend to any particular business for the company.

Q. I am simply asking you now for the purpose of having your recollection as to whether you did or did not correspond with him in the year 1882 on matters of the Chicago and Great Southern Railway Company?

A. I could not state positively without referring to my letter-books of that time. It is likely I corresponded with him.

Q. All your correspondence conducted with him would be, would it not, upon letter-heads bearing your name as president?

1297 A. It would be likely to be upon such letter-heads. If such letter-heads were not at hand why it would be likely that I might have written to him on the Air Line letter-head, which my name was probably on in another capacity.

Q. Mr. Starin, in your entire continuance in my employ you were in the habit, were you not, of putting all of the letters which you wrote in a distinct letter-book?

A. Yes, sir.

Q. What was done with that letter-book when you left my employ?

A. I will state that the letter-book that I used contained not only my correspondence in connection with the Air Line and Great Southern road, but also my own personal correspondence; that letter-book, I think, is in a desk that I sent away for storage a year ago to Wisconsin, containing a great many old papers that I never expected to use again, and for which I have no room here in the Borden Block. That book, I think, is in that desk now in Wisconsin.

Q. That letter-book contains, does it not, all of the letters which you officially wrote as president of the Chicago and Great Southern Railway Company, or on matters of that company?

A. Yes, sir; it does. I will state my reason for sending that letter-book. Up to a year ago I furnished my own rooms where I live. At that time I broke up, so far as my room furnishing was concerned, and sent my furniture, including a desk that I had, up to my old home in Wisconsin, as I had no place to store it here and it would be better taken care of up there. I have never opened the desk since. I think that letter-book is there.

1298 Redirect examination by Col. COOPER:

Q. When did you say you entered Mr. Crawford's employment?

A. My first connection with Mr. Crawford dates from the 21st of September, 1879. I had but a few months previous to that been admitted to the bar in the State of New York. Mr. Crawford, at that time, was exclusively engaged in the law practice; he was likewise interested in the building of the Chicago and Western Indiana road. I do not consider that I was in Mr. Crawford's employ until the month of February, 1880, at which time the Chicago and Indianapolis Air Line railway was organized, myself being one of the incorporators, and, subsequently, I was elected secretary and treasurer of that company. The date of my election as secretary and treasurer of that company would probably be the correct date as to the commencement of my employment with Mr. Crawford.

Q. I understand you to say that you went to Goodland, Indiana, to attend a meeting held, as recorded in the record-book, on March 15, 1882. I will ask you at whose instance you went there?

A. I had been absent from home in the East, I think, nearly a week and returned to the city, and Mr. Crawford had left word, either in writing or with his son, that he requested me to go to Goodland at that date. I did go to Goodland at that date, in company with Mr. Crawford's son and Mr. Lacey.

1299 Q. Did you meet Mr. Crawford there?

A. Mr. Crawford was there in advance of myself; I think he had been down there a day or two; he may have gone the night before.

Q. You were elected a director on the 15th of March, 1882, were you?

A. Yes, sir.

Q. What pecuniary interest did you have, at the time of your election as director, in the Chicago and Great Southern Railway Company?

A. I had no pecuniary interest in it. The only interest I had in it was Mr. Crawford's interest.

Q. Did you accept your election as director?

A. I never gave a formal acceptance. I acted as director subsequent to it. I will add to that: I was present when I was elected a director, and I certainly accepted it.

Q. Did you at that time or ever afterwards own any stock in that company?

A. I never held a certificate.

Q. Did you ever buy a share or shares of stock in that company?

A. I don't think I ever subscribed for any stock.

Q. Did you ever buy a share or shares of stock, or agree to pay for any?

A. I don't think I ever did.

Q. Then you never had any interest in the property of the Chicago and Great Southern Railway Company by way of stock interest?

A. As I have stated before, I had no pecuniary interest in it.

Q. At whose instance did you accept your election as director?

A. Mr. Crawford's desire that I should be a director was sufficient for me at that time to accept the position as director.

Q. That was the reason why you accepted, was it not?

1300 A. Certainly, yes.

Q. In whose interest did you act in serving as director while you were a director of that company?

A. I presume I served in Mr. Crawford's interest.

Q. It was at Mr. Crawford's request and for his interest that you accepted the position as director and that you afterwards acted as director, was it not?

A. So far as I was aware there were no interests in the company conflicting with Mr. Crawford's.

Q. As you understood it at that time, were there any other interests in the company except Mr. Crawford's?

A. As I understood it there were not.

Q. That he was the sole stockholder you understood at that time?

A. I cannot say that I understood he was the sole stockholder, because I knew that subsidies had been voted to Mr. Foster's road. I was not aware whether, under the Indiana law, the commissioners had elected either to donate or take stock subscriptions.

Q. You were not aware that there were any debts against the company at that time, were you? I mean at that time, on the 15th.

A. I didn't know how much Mr. Foster owed—that is, the debts that Mr. Foster had incurred while he was constructing it. I didn't know much about the finances of the company.

Q. Isn't this the truth: That you understood at that time, and on
the 18th of March, three days later, that Mr. Crawford, hav-
1301 ing bought out Mr. Foster and his codirector, was the owner
of all the securities at that time, or at least all the stock
at that time, issued by the Chicago and Great Southern Railway Company?

A. I understood that Mr. Crawford owned all of the assets of the Great Southern road. I was not aware that there were any other interests concentrated in the property.

Q. And in what you did in the matter of accepting a position as director, and afterwards in accepting the position of president, and in accepting the construction contract, it was solely and only because of your understanding that Mr. Crawford was the sole party in interest in the company and because Mr. Crawford wanted it done—isn't that so?

A. If you put it that way, probably that is true.

Q. Did you examine the construction contract of which a copy was handed to you, or the draft of which was handed to you, by Mr. Crawford prior to the meeting of March 18th, 1882, and on that day?

A. Prior to the meeting I don't think I did examine it. I did not have time to examine it, but, in order that I should know what the document was that I proposed to the board to approve, I read the entire contract aloud before the board myself.

Q. Did you examine the contract with reference to seeing whether that was the contract which you as president of the company should execute on behalf of the company, and for the interest of the com-
pany as a corporation, prior to the time you signed it, or sim-
1302 ply did you sign it because the board of directors had author-
ized it to be signed?

A. I signed it because the board of directors had authorized it to be signed. They had approved the contract. I considered at that time that Mr. Crawford's interests and the interests of the company were identical.

Q. Did you vote for the contract at the meeting of the board?

A. Yes, sir.

Q. In voting for that contract did you or not vote for it because Mr. Crawford wanted it in that way?

A. I voted for it because I thought it was proper for me to vote for it.

Q. Before you voted for it, did you examine to see whether that was a contract in the interest of the railway company that the railway company ought to enter into?

A. As I have stated, I considered at that time that Mr. Crawford's interests and the interests of the company were identical. On that account I thought it was proper for me to sign the contract.

Q. I mean vote for the contract.

A. And to vote for the contract; I could not see any reason why I should act otherwise.

Q. What I am getting at, is this Mr. Starin: Whether or not, in your action as president and director of that company, you did not perform your official action, whatever it was, on the theory and upon the basis that Mr. Crawford's interest in the railroad company was the only interest, and that Mr. Crawford wanted it so, and therefore he ought to have it so?

A. Not wholly because Mr. Crawford's interest was the only interest, but I certainly knew that Mr. Crawford's interest was
1303 paramount, many times, to that of any one else, and, as I
say, at that time I knew of no other interest aside from Mr. Crawford's.

Q. Now, this contract provides, among other things, that Mr. Crawford might put down steel or iron rails; did you know at that time that there was a great difference in the cost and in the utility of the two kinds of metal?

A. Certainly I did.

Q. Did you give that any consideration as to whether the company ought to leave that open as an option with Mr. Crawford to put down one or the other as he chose?

A. I don't know that my attention was especially drawn to that provision in the contract. Mr. Crawford, as I understood it, was furnishing the money to build the road, and I naturally inferred that he would construct it of such materials as his financial ability would enable him to pay for.

Q. How long was the board on the 18th of March, 1882, considering the matter of this contract? How long did it take the meeting to transact that business?

A. I read before the board whatever documents were submitted for its action, and then action was taken upon those documents after I had read their contents before the board. It would be simply a question of computation as to the time it would take to read those documents and the time necessary to put a motion to adopt them and carry it. How long it took I don't know.

Q. There was no discussion as to whether the company ought to enter into them?

A. There was no discussion.

1304 Q. I see that the resolution reads "That the construction contract this day entered into between this company and Henry Crawford be in all things approved, ratified, and confirmed, and that the secretary spread the said contract at large upon the records of this company;" is that your recollection of the reading of the resolution?

A. That is my recollection of it; that was the usual resolution that was always presented in any meeting of any board of directors that I have ever attended, either in connection with the Air Line or the Great Southern road.

Q. As to form?

A. As to form.

Q. Did you understand that that was true; that that contract had been that day entered into between the railroad company and Mr. Crawford, and that all the directors had to do was to approve and confirm it?

A. The contract had not in reality been entered into at the time that resolution was passed; the contract had been drafted and was written out in full; that resolution, approving and ratifying the contract, as I understood it, authorized me in behalf of the company to execute it.

Q. The resolution says, "That the construction contract this day entered into." Now, did you understand that to be true that the contract had been entered into without being formally signed; that that contract had been agreed upon between the company and Mr. Crawford at the time that meeting was called?

A. I understood that the contract that was given to me to present to the board was the form of the contract for the construction of the road which Mr. Crawford desired the board to approve. 1305

Q. That Mr. Crawford, as owning the controlling interest in the company, was satisfied with, and Henry Crawford, as contract, or was satisfied with it; that is what you understood?

A. Certainly. If he had not been satisfied with it I presume it would never have been submitted to the board for its action.

Q. When did you first see this record-book to make an examination of it?

A. I never examined the record until about ten days ago; I came in Mr. Gray's office and hurriedly went through it.

Q. And I understand you to say on your cross-examination that you had tried to get the record-book to examine it while you were president and one of the directors of the company?

A. I had stated to Mr. H. Crawford, Jr., and Mr. Lacey several times in the 1st year that I was connected with Mr. Crawford that I would like to see the record-book. At such times as I requested it, I think they stated the record-book was at Mr. Crawford's house, or was not where they could readily obtain it.

Q. Mr. Crawford, Sr's., house?

A. Yes, sir; so I did not see it.

Q. Were you persistent in your inquiries after the record-book?

A. I asked Mr. Lacey for it several times; I told him I would like to see it; I did not demand of him to get the record-book, but I told him I would like to see it; I didn't know what shape the record was in.

1306 Q. And you asked Mr. Henry Crawford, Jr., for the record-book, also, did you not?

A. I suggested to Mr. Henry Crawford, Jr., that I would like to see the record-book once or twice—possibly oftener.

Q. And the result of it all was that you did not see it?

A. I did not see it.

Q. You say your impression is that Mr. Meiselbar was present at the meeting of the directors on the 18th of March, 1882?

A. That is my impression.

Q. Who else was there—I mean outside of the recitations in the records of the company—who else, according to your recollection, was present at that meeting?

A. It is my recollection that Mr. Lyon was present; Mr. H. Crawford, Jr.——

Q. Was Mr. D. H. Conkling there?

A. I don't think he was—that is, I have no recollection of it; I should have to refer to the record.

Q. Was Mr. Lacey there?

A. I think he was; yes, sir. So far as I remember, Mr. Lacey, Mr. H. Crawford, Jr., Mr. Lyon, Mr. Meiselbar, and myself were there.

Q. How was the meeting conducted; were you all sitting or standing up?

A. I think that either one or two were either standing by the window or sitting in the window. I sat at Mr. Lyon's desk and conducted the business.

Q. Do you remember Mr. Meiselbar taking any part in the meeting—voting or making any motions?

A. I do not remember his voting or making any motions.

1307 Q. The meeting occurred in D. J. Lyon's office, did it not?

A. It occurred in the office occupied by Mr. Lyon at that time; yes.

Q. Where was Mr. Meiselbar's office with relation to Mr. Lyon's office?

A. Mr. Meiselbar's office with relation to Mr. Lyon's office was across the hall, and in the northeast corner of the hall.

Q. Was Mr. Meiselbar at and about there — times frequently in Mr. Lyon's office?

A. Very frequently.

Q. Do you remember at what hour in the day the meeting occurred?

A. I should say between three and five o'clock in the afternoon; between those hours.

Q. Did you have a quorum there without Mr. Meiselbar—that is, five directors, according to your best recollection?

A. As I have before stated, the directors whom I recollect as being present were Mr. Meiselbar, Mr. Lacey, Mr. H. Crawford, Jr., Mr. Lyon, and myself. I have no recollection that any others were present.

Q. Whether Conkling was there or not you don't know?

A. Without consulting the record, no.

Q. The record recites Mr. Conkling as being present?

A. Well, as I say, I don't recollect that Mr. Conkling was present or was not.

Q. The record recites that there were present all the directors
except Mr. McDonald and Moore; and Mr. Conkling, having been
elected a member three days before, at the meeting at Good-
1308 land, of course that would include him?

A. Yes, sir; I don't remember his being there.

Q. The recitation in the record of the meeting of May 1, 1882, on page 105, which states that you was present, among others, at a regular meeting of the board of directors at Goodland May 1, 1882, I understand you to say that that is incorrect?

A. As I said before, that is a mistake.

Q. [At] the meeting of January 29, 1883, it is recorded in the record-book that Mr. Meiselbar was present there; I understand you to say you don't know whether he was present or not there?

A. I do not; I have no recollection of that meeting as to who were present, and would not have, except by consulting the record.

Q. It is recorded in the record-book, on page 131, at the meeting held in Chicago on the 18th day of April, 1883, that yourself, H. Crawford, Jr., D. J. Lyon, Henry Meiselbar, F. F. Lacey were present as directors; do you remember that Mr. Meiselbar was present at that meeting?

A. I have no recollection.

Q. And you were asked whether it was not necessary to have Mr. Meiselbar there in order to have a quorum. I will ask you whether there might not have been some other director there instead of Mr. Meiselbar and still have a been quorum there?

A. There might have been a quorum there without Mr. Meisel-
bar. I infer from the fact that all these parties whom the record
recites as being present at that directors' meeting of April
1309 18 were parties all within easy call and reach of the office.
The other directors at that time were not within easy reach
of the office.

Q. Mr. Conkling might have been there, might he not?

A. Was Mr. Conkling a director in 1883?

Q. Yes; the same directors exactly that were elected before.

A. No; I don't think Mr. Conkling could have been there in 1883, because Mr. Conkling was the receiver of the Illinois Midland, and I don't think that he came to the office once in six months after he went on that road.

Q. Do you remember that he was not there at that time?

A. April 18, 1883?

Q. Yes.

A. I do not remember that he was not there, but I am certain in my own mind that he could not have been there, because he was receiver of the Midland road, and I don't think he was ever present at any meeting after he left the Great Southern railroad; that is my recollection of it.

Mr. **Crawford**: He resigned at that meeting?

A. As I stated before, I don't think Mr. Conkling ever attended any meeting after he went on the Midland road.

Col. **Cooper**: When did he go on the Midland road?

A. I think he was appointed receiver of the Midland road in the summer of 1882—early in the summer; that is my impression. I think he was appointed receiver of the Midland road shortly after I was elected president.

1310 Q. The record recites that Henry Crawford appeared and took his seat as director at the conclusion of the meeting. Do you remember whether or not he did not appear at the beginning of the meeting, and after the resignation of Mr. Conkling was received and acted upon, that Mr. Crawford acted as the fifth director?

A. I will state those circumstances as I remember them, if that is a proper answer to the question. I had, a few days previous to April 18, 1883, gone to Omaha. Before going I had placed in Mr. Crawford's hands, or rather I had left so that he would procure the same, he not being in the city when I went away, my resignation both as president and director in the company. On my return, I think the morning of the day on which this meeting was held, Mr. Crawford stated to me it was not his desire that I should resign both as president and as director; in fact, I had put it in his hands entirely on my own volition, in the first place, without ever asking him or conferring with him about it; he said it was not his desire that I should resign as director and president, but I should simply resign as president, which I did, and Mr. Crawford was elected president, and I think I was elected vice-president at that meeting.

Q. Do you remember now whether Mr. Crawford appeared at that meeting, at the beginning of the meeting, or not?

A. I do not remember; it is very likely he was in the room.

Q. Do you remember whether or not Mr. Conkling's resignation was one of the earliest matters attended to at that meeting?

A. I do not distinctly remember that Mr. Conkling's resig-
1311 nation was acted upon at that meeting.

Q. When did you learn that the bonds had been pledged with Mr. Dull, about what time, as near as you can fix it?

A. I cannot fix the exact date of my knowledge with reference to that; I knew that as far back as the spring of 1881 Mr. Crawford had made an agreement with Mr. Dull to purchase the bonds and stock of the Chicago Block Coal road. I do not now remember whether I knew Mr. Crawford had given his note to Mr. Dull previous to placing the securities with Mr. Dull as collateral with the note or not. I suppose the truth of that matter was that Mr. Crawford's agreement with Mr. Dull was to the effect that as soon as Mr. Crawford could bring about these matters—that is, as soon as the Great Southern bonds could be issued to him—that he would put them up as collateral; that is simply a presumption.

Q. Do you have an independent recollection that at any time in the year 1882 you knew that the million dollars of bonds of the Chicago & Great Southern were held by Mr. Dull as collateral; I mean at that time?

A. I knew the bonds had been executed by Mr. Foster on behalf of the company; I knew they had been authenticated by the trustee, Mr. New, and had been placed in Mr. Crawford's possession; knowing the agreement that Mr. Crawford had with Mr. Dull, I knew inferentially that those bonds and the stock had probably gone to Mr. Dull as collateral for Mr. Crawford's indebtedness.

Q. Didn't you know that Mr. Dull himself held the securi-
1312 ties of the Block Coal road as collateral security to Mr. Crawford's note?

A. I supposed that Mr. Dull would not part with his securities on the Block Coal road until he got paid for them.

Q. At how early a date did you know that Mr. Crawford had agreed with Mr. Dull to hypothecate the bonds of the Chicago & Great Southern Railway Company as collateral security to Mr. Crawford's note?

A. I don't know that I ever knew that he had an agreement of that sort with Mr. Dull; I know that would be the natural transaction.

Q. Why would it be a natural transaction? Mr. Crawford, as I understand the transaction as testified to here, bought securities of the Chicago Block — road from Mr. Dull, and gave his note for two hundred thousand dollars; Mr. Dull held those securities until that note should be paid. Now, what was there in the transaction that would make you naturally infer that the million dollars of bonds of the Chicago & Great Southern should also be put up as collateral security? That is what I am asking.

A. There was just this in that transaction that led me to reach such a conclusion as that, perhaps: I was pretty well aware that the note had not been paid when it had matured; I knew that Mr. Dull was rather restive and that possibly he was not satisfied in his own mind that Mr. Crawford was going to be able to carry out that agreement with him, and knew that Mr. Crawford was anxious to make this Block Coal road a portion of his projective Great Southern, and I presumed that those bonds had been put up with
1313 Mr. Dull, in consideration of his further forbearance until
Mr. Crawford could finance a little; that was my general idea of the situation, although Mr. Crawford had never told me of the transactions or agreements that had occurred between him and Mr. Dull.

Q. Did anybody else tell you?

A. No; but I knew those things by intuition, perhaps, you might call it.

Q. At how early a date did you actually know, without drawing any inferences, that those bonds were hypothecated with Dull?

A. I cannot fix the date. If any memoranda could be shown to me which would show the time when the first million of dollars of those bonds went into Mr. Crawford's hands why I might be able to answer the question more definitely. I presume they went to Mr. Dull shortly after they came into Mr. Crawford's hands.

Q. I am not asking for your presumption. I am asking what information you had.

A. I could not fix the date any other way than that.

Q. And after all it was a presumption, from your general knowledge of the situation, that Mr. Dull had them. That, I understand, is your testimony?

A. Yes, sir; because I knew that Mr. Crawford had not been able to take up his note from Mr. Dull when it had matured, and Mr. Dull was anxious to get his money out of the property. He probably required Mr. Crawford to put up those securities or else he should be inclined to disregard his contract with Mr. Crawford. That was my impression of the situation; that is all.

1314 Q. Mr. Starin, you have been asked at length about moneys that you paid out, and which you knew Mr. Crawford to have paid out in connection with the Chicago & Great Southern railroad and its building. I will ask you as to whether the moneys you paid out you did not take vouchers for.

A. Certainly I did.

Q. What did you do with those vouchers?

A. I turned them in to Mr. Crawford as credits of my own in my account with him.

Q. Do you know of their ever having been destroyed?

A. I don't think—I certainly never destroyed them; I don't think they ever were destroyed. I will say this much, I am satisfied they never were destroyed up to the time I left Mr. Crawford's office.

Q. If you had those vouchers presented to you, such of them as you paid, you would be able definitely to say in dollars and cents how much you paid out, would you not?

A. Certainly.

Q. Without those vouchers you would be unable to say?

A. Yes, sir; not without the vouchers. As I stated, the letter-book that contained many of my letters, wherein, of course, I rendered statements to Mr. Crawford, would also give me proper information just as well as the vouchers themselves.

Q. That letter-book, you say, is in Wisconsin?

A. Yes, sir.

Q. The statements, if produced, would enable you to say how much money you had disbursed on account of the construction of the Chicago & Great Southern?

A. Yes, sir; substantially, although it might be that the 1315 statements might not exhibit my entire transaction. For instance, I might have drawn a check for Mr. Crawford and taken a voucher, and might have turned the voucher immediately over to him, so there would be no necessity of my making a record of it.

Q. Has he got the checks and the vouchers and the statements, or did you give them to him?

A. Of course all the checks I drew were on Mr. Crawford's account and charged up to Mr. Crawford. He must have the checks, except in some instances I might have drawn my own check for [a] small amount and afterwards turned in the voucher to Mr. Crawford as cash; there were instances of that sort.

Q. You were asked a question substantially like this: Whether or not the construction contract was fraudulent, illegal, and void when you signed it, or whether you supposed you were signing a construction contract that was fraudulent, illegal and void? I will ask you whether or not, in case there had been substantial stock interests in that company which Mr. Crawford did not own and which were not acting in harmony with him, whether you would have then considered that construction contract fraudulent or not as against the minority of the stockholders had you known that to have been the case?

Objected to by solicitor for complainant.

A. I should have acted entirely as my best judgment dictated in that event. In that event I should probably have considered which interest was the paramount interest, and I will state here that 1316 had I been advised of adverse interests I should certainly have been inclined, so far as I was concerned, to see that the parties holding such interests had a fair hearing. Let me add to that answer: In other words, I certainly should not, knowingly, have taken any action likely to affect other men's property interests without first having given the persons owning such interests an opportunity to be represented.

Q. You have been further asked, on cross-examination, whether you ever concealed from the creditors of the company, or any other persons interested in it, the fact of this construction contract. Do you remember whether any one ever inquired of you about it—any creditor of the company or any stockholder whilst you were president and director?

A. I don't remember that the matter was ever brought to my notice by any creditor.

Q. Did you have, during the time that you were a director and president or vice-president, or either, of the company, possession of any of the corporate records, papers, or documents belonging to the company?

A. So far as the records themselves were concerned—that is, the corporate records—the record-book produced here, that was not in my hands; it was in the hands of the secretary. From time to time, naturally, various documents and papers of the company came into my hands; as a rule, most of the corporate papers and documents were in the possession of Mr. Crawford; he had the personal care and control of them.

Q. Did you have the custody of the construction contract 1317 after it was executed?

A. No, sir; I don't think I had.

Q. Was there more than one copy of it made and executed?

A. I am unaware as to that; if the contract itself shows that it was executed in duplicate, it probably was executed in duplicate; I never kept a copy of it.

Q. You never kept a copy of it?

A. Never.

Q. You never had an original duplicate in your possession, as president, after its execution?

A. I don't think I had; the secretary probably had that, Mr. Lacey, or Mr. Crawford himself, or Mr. Crawford's son; I did not have it.

Q. Mr. Crawford has asked you at the beginning of his cross-examination whether or not you were not employed by him in the highest confidential capacity; I will ask you whether you ever violated that confidence?

A. I have not, intentionally.

Q. I will ask you what time it was you resigned as president?

A. I tendered my resignation as president in April, 1883, at the same time I tendered my resignation as a member of the board. As I have before stated, my resignation as president was accepted, but as director it was not.

Q. Did you afterwards tender your resignation as vice-president and director?

A. I tendered my resignation as vice president and director, I think, on the 24th of July, 1883.

Q. Did you tender your resignation as president and director at the instance of Mr. Crawford?

A. I did not, in the first place; no, sir. I did so of my own volition.

1318 Q. What was the occasion of your tendering your resignation as president and director?

A. Well, I inferred, not from anything Mr. Crawford had said, that such a course would be agreeable to him; and I put my resignation in his hands, although Mr. Crawford had never mentioned the matter to me prior to my putting it in his hands.

Q. What was the only reason?

A. I had no special desire to remain as president of the road. I thought it would be agreeable to the wishes of Mr. Crawford for me to resign as president.

Q. Do you know why; can you recall any circumstances—any- you have heard Mr. Crawford say, or any intimation that he had made?

A. I knew that Mr. Crawford had from the outset expected to be the head of the corporation; I thought it would be agreeable to his wishes for me to resign as president; that was my reason for resigning, and I had no special desire myself to remain.

Recross-examination by Mr. Crawford:

Q. Mr. Starin, I asked you the question as to whether or not I had employed you in the highest confidential capacity, with a view of getting your statement as to whether or not it was not my constant habit to consult and advise with you with regard to what I was doing and how I was doing it, and all of the circumstances in which I was placed from time to time.

1319 A. Certainly. I usually knew what Mr. Crawford was interested in, and had an intimate knowledge of his private affairs, obtained from himself.

Q. Was it not outside of the usual habit of employer and employé that I consulted you constantly and took your advice with regard to the situations from time to time in which I found myself placed?

A. That was probably true, so far as my connection with the Chicago & Indianapolis Air Line railroad was concerned. In the Great Southern road I did not give the attention to matters of detail that I had in connection with the former enterprise and was not so well posted concerning its affairs, although in a general way I always knew about how Mr. Crawford stood and his financial prospects.

Q. Recall your attention to the financial situation of 1881 and 1882 and the spring of 1883; you knew, did you not, constantly from information which I conveyed to you personally, that I was in a very embarrassed and perilous situation in regard to what I had invested in the Chicago & Great Southern railway, didn't you?

A. I always regarded it as being a perilous situation, yes.

Q. Didn't I tell you so?

A. I don't know that you expressed yourself as being in fear, so far as the outcome of that enterprise was concerned, although I knew enough of the situation myself to have a good many doubts and fears concerning it. I will add to that answer, that Mr. Crawford was always of a very sanguine disposition and hopeful disposition concerning the affairs of the Great Southern road or any
1320 other enterprise he was interested in.

Q. As to the ultimate outcome?

A. Yes, sir.

Q. You knew I was putting a very large sum of money, did you not, into that enterprise?

A. I knew you had put in money, yes; had put in a large amount of money; I knew that you had put in all the money that came into your hands, substantially.

Q. With regard to the corporate documents about which you have testified; there were no corporate documents, were there, outside of the contracts and vouchers that you knew of?

A. About all the corporate documents that I ever knew anything about. I don't think the articles of incorporation of the Indiana and Chicago road were ever in my hands; they were matters of record, anyway, and it didn't make any difference. I don't think there was ever any regular printed stock-books; I know there was not, and so far as the corporate documents were concerned, I don't know that the company had any archives of that character of especial value.

Q. There was no occasion for any, was there? The company was not building its own road, was it? It had not any means to do that, had it?

A. No; the company as a company had no means.

Q. The whole thing was that I was furnishing the money to the extent that I was able to furnish it and buying material and constructing the road, and taking vouchers and filing them away; wasn't that about the whole sum and substance of it?

A. That was about the method of doing the business.

1321 Q. When those vouchers are produced they will show, as far as you know, the accurate and honest expenditure of every dollar that was paid on the work, won't they?

A. They ought to. I don't know whether your employés in Indiana were careful in taking vouchers for all their expenditures or not. The vouchers ought to show it.

Q. You have been asked about that meeting of April, 1883. Now, you are very clear, are you not, in your recollection, Mr. Starin, that Mr. Conkling was not present at that meeting?

A. I am almost positive of it; yes.

Q. And it would have been impossible, consistent with the corporate action, for me to have been present before I was elected director, wouldn't it, and taken part in the meeting? You don't remember any occurrence of that kind, do you?

A. No; as I before stated, you may have been in the room.

Q. But I mean take action as a director?

A. I don't think Mr. Crawford acted as a director at that meeting until after he was elected a director.

Q. And Conkling was not present?

A. It is my recollection he was not.

Q. It therefore required five persons to make a quorum, didn't it, to accept Mr. Conkling's resignation before I could get in, wouldn't it?

A. Yes, sir.

Q. And the five persons engaged there were all on the same floor where you were, were they not, Mr. Starin?

A. All of them within call.

Q. On the same floor?

A. All on the same floor; yes, sir.

1322 The signature of the witness to the above deposition was waived by agreement of counsel.

Adjourned to Friday, November 20th, at 12.30 o'clock p. m.

FRIDAY, *November 20th*, 1885.

Parties met, pursuant to adjournment, at 12.30 o'clock p. m.

Solicitor for defendants introduced in evidence certified copy of the records of the commissioners' court of Newton county, Indiana, relative to the vote of the tax in aid of the building of the Indiana & Chicago railway and the various proceedings in relation thereto by the commissioners of said county, which is hereto annexed and marked Exhibit L.

Col. COOPER: Mr. Meiselbar, in accordance with the arrangement, having presented to me the papers received from Lacey and the letter from Lacey, it is agreed by counsel that the papers have no relation to the present litigation and the matters involved therein. Mr. Gardner, as attorney of the Chicago & Great Southern Railway Company, receives the papers and takes possession of them.

The paper marked Exhibit P, under date of August 16, 1323 1884, to Drexel, Morgan & Co., signed by F. F. Lacey, secretary, was not put in evidence through the procurement of Mr. Meiselbar, but through the solicitor for the complainant.

Solicitor for defendants offered in evidence the paper produced by Mr. Gage, being a statement of Mr. Crawford's account, which is hereto attached, marked Exhibit M.

Solicitor for defendants offered in evidence certified copy of the assignment of Henry Crawford to the First National Bank of Chicago, dated December 26, 1884, which is hereto attached, marked Exhibit N.

Solicitor for defendants also offered in evidence certified copy of a note given by Henry Crawford to the First National Bank of Chicago, dated January 15, 1885, which is hereto attached, marked Exhibit O.

1324 Solicitor for defendants offered in evidence the document called for in Mr. Porter's deposition, containing a list of papers forwarded by Drexel, Morgan & Co. to H. H. Porter and S. N. Nickerson, which paper is as follows, to wit:

"NEW YORK, *January 14th*, 1885.

H. H. Porter, Esq., room 38, Portland Block, Chicago, Ill.

DEAR SIR: We are in receipt of your favor of the 12th inst., covering drafts for $392,363.24, amount due us per agreement of June 25th, 1884, with Mr. S. N. Nickerson and your good self.

As requested, we send you by Adams Express, under your address, covered by wrapper addressed to the 1st National Bank of Chicago, valued at $50,000, express charges to be paid on delivery to that bank.

1. $1,200,000 stock (12,000 shares, $100 each) Chicago & Great Southern R'way Co.

2. $1,200,000 bonds (1,200, $1,000 each) do.

3. Order on the Union National Bank of Chicago for $800,000 of these bonds.

4. Agreement of John C. New, trustee, dated Jan. 27, '82, as to his certificate of bonds, subject to the consent of A. J. Dull, 1325 with endorsement of A. J. Dull, dated Jan. 5, '83, in our favor, and endorsement by us, dated Jan. 14, '85, in your favor.

5. Cancelled promissory notes of Henry Crawford:

$100,000 }
100,000 } Dated Jan. 5, '83, payable 6 mo. after date, with interest from date.
50,000 }
50,000 " " " " April 27, '83.
50,000 " Aug. 13, '83, " on demand, date.

6. Agreement dated June 23, '81, between Wm. Foster and Henry Crawford, relating to the purchase by the former of certain Indiana & Chicago R'way Co. stock.

7. Agreement dated March 15, '82, between Henry Crawford and Wm. Foster, relating to the purchase by the former of certain Indiana & Chicago Railway Co. stock.

8. Agreement dated April 27, '82 (memorandum in pencil: "This

is really dated April 27, 1881"), between Henry Crawford and Henry McCormick, relating to the purchase by the former of certain Chicago & Block Coal R. R. Co. stock.

9. Consolidation agreement, dated March 23, '83, between the Chicago & Great Southern Railway Co. and the Chicago & Block Coal R. R. Co.

10. Certified copy of resolutions, dated May 5, '84, by the board of directors of the Chicago & Great Southern R'way Co. as to the issue of their stock in place of an equal amount of Chicago & Block Coal R. R. Co. stock, and an additional issue of their stock to 1326 pay for construction, so as to make the total of both issues $1,200,000.

11. Sundry vouchers for payments made by Henry Crawford on the Chicago & G't Southern Railway Co. ac. and covered by drafts on us.

Kindly acknowledge receipt.

Very truly yours,

DREXEL, MORGAN & CO.

P. S.—We have acknowledged receipt of your remittance by telegraph, and advised you that your instructions would be followed."

1327 MONDAY, *November 23rd*, 1885.

Parties met, pursuant to agreement, at 11 o'clock a. m.

JOHN W. SWAN, being recalled on behalf of the complainant, was examined in chief by Mr. PIERCE, and testified as follows:

Q. Mr. Swan, you have already testified here on your own behalf before the commissioner?

A. Yes, sir.

Q. I will ask you to state what other tax-payers, if any, in your county have requested you to prosecute this petition of yours?

Objected to by counsel for defendants as incompetent.

A. I will just say that there was not a man in our township that knew I was in court until Friday morning.

Q. Last Friday morning?

A. Last Friday morning. I told one that the case was in court, and that I supposed it would be decided any day. I supposed your evidence went in against the 20th as well as the other. That is the reason I said we might look for a decision any day. Not a man in our township knows it.

Q. Not a man in your county—that is, not a tax-payer?

A. Not a tax-payer in our township knows it from me or from Mr. Straight or Wiley, so they tell me.

Q. How is it about the other townships in your county?

A. I don't know a thing about it.

Q. What is your township?

A. Union township.

1328 Q. And the other is what?

A. Oak Grove township.

Q. I will ask you if any tax-payers in either one of those townships in your county have requested you or talked to you about prosecuting this suit of yours?

Objected to by solicitor for defendants as incompetent.

A. No, sir; I have not seen a man from Oak Grove township to talk with him on the subject, except Mr. Dwiggins, at the time I spoke of.
Q. That is the conversation you referred to in your testimony before?
A. Yes, sir.
Q. That is the only conversation you had with him?
A. That is the only conversation.
Q. How about Newton county; I will ask you if any of the tax-payers of Newton county have requested you?

Objected to by solicitor for defendants as incompetent.

A. No, sir; no one has ever requested me.
Q. So far as you know, none of them know of this proceeding?
A. Mr. Foster knows; he spoke to me about it; he laughed at me about riding two horses.
Q. That is, William Foster?
A. Yes, sir.
Q. And, so far as you know, he is the only man in either one of those counties that knows anything about your actions but Dwiggins?
A. Mr. Annabal spoke to me about it.
Q. Mr. Annabal, the attorney?
1329 A. Yes, sir; he spoke about my claiming my rights as a tax-payer.
Q. Now are those the only parties that you have ever said anything to about it?

Objected to by solicitor for defendants.

A. All that I can recollect of. I don't think that anybody else has ever spoken to me on the subject except Dwiggins, Foster, and Annabal.
Q. Dwiggins, Foster, and Annabal are the only ones?
A. Yes, sir—that I know of.
Q. And they said nothing about joining with you?

Objected to by solicitor for defendants.

A. No, sir; no man has ever said a word about it or entered into any bargain.
Q. You stated in your other examination, Mr. Swan, when you were on the stand before, that the attorneys had come to you and requested to use your name to prosecute this suit.

Objected to by solicitor for defendants.

A. Yes, sir.

Q. And you also stated that you consented to the use of your name with the understanding that you were not to pay any costs or any attorneys' fees?

A. I don't think that was the language which I used.

Q. What was it that you said about it?

A. I told Mr. Wiley that I would not pay any attorney fees or costs.

Q. That was the way, was it?

A. I think that was my language.

1330 Q. I will ask you if you are paying any expenses in connection with the prosecution of your suit?

A. No, sir.

Q. You are not paying any at all?

A. No, sir.

Q. I will ask you who paid your expenses when you came up here before to testify, Mr. Swan?

A. Mr. Cooper.

Q. Col. Cooper?

A. Yes, sir.

Q. Where were you when the attorneys first came to see you about it?

A. I was on the streets in Fowler.

Q. That was the first talk you had, was it, on the streets in Fowler?

A. Yes, sir.

Q. Who did you have that talk with?

A. Mr. Wiley.

Q. Did he ever come to your farm to see you?

A. No, sir.

Q. You stated in your evidence before that an attorney came to the farm to see you; how was that?

A. Came to the farm?

Q. Yes.

A. Mr. Wiley came out to the farm once; he was going to get an assignment of the stock—of the taxes of the tax-payers of our township; then he was at the farm.

Q. When was that—before or after this conversation in Fowler?

A. It was after that.

Q. Was that the first conversation you had with any attorney about asserting your rights as a stockholder — occurred in Fowler with Mr. Wiley and on the street.

A. On the street—yes, sir.

Q. Did he come to you or did you hunt him up?

A. I met him on the street.

1331 Q. And you had the conversation there?

A. Yes, sir.

Q. Who began the talk about this matter?

A. I could not say positively which one began it, but I presume he did.

Cross-examination by Col. Cooper:

Q. You live near the line of this road, do you not, Mr. Swan?

A. I live two miles from the road.

Q. What is the feeling among the tax-payers there with reference to the manner in which the men along the line of that road who did the work by the day and have not got their pay yet, so far as you have heard any expressions of opinion among the tax-payers of your town?

Objected to by solicitor for complainant.

A. They think they have been unfairly dealt with.

Q. The men have?

A. Yes, sir; the laborers.

Q. To what extent does that feeling go?

A. Well, I don't know to what extent; I have heard them express themselves as being very unfair to those who did the work, built the road up, the laborers, and then get no pay for it, as a good many of them haven't got; some men have furnished hay for horses and sold it to them; a nephew of mine has not got his pay, which is needed very much; another nephew worked on the road; they owe him about $70; he put in bridges and culverts; and a man by the name of Sargent has some money due him; he is almost
1332 a pauper; I think there is near a hundred dollars due him,
something about that; the feeling among the people when they talk about it and express themselves is that it is an outrage, that the men ought to be paid; the men that did the work ought to be paid up.

Q. From your knowledge of the tax-payers of your town and their feeling about this, what is their disposition, as far as the tax-payers are concerned, towards using all the legal rights they have as tax-payers and entitled to stock in the company, towards compelling the company to pay, or the persons in control of this company to pay, the debts?

Objected to by solicitor for complainant.

A. I never talked with a man about that; there is not a man that knows anything about my connection with the case in my township, or did not until Friday morning; I think it was Friday morning I told Mr. John Patterson.

Q. What did he say about it?

A. Well, he didn't make any remark, only he was not aware there was anything of the kind going on.

Q. You have, as I understand from your former testimony, two objects in view in going into this matter; one is, and the main one, to compel the company to pay, or to compel the people in charge of this road—in control of it—to pay, the honest debts of the company?

A. That is what I told Mr. Dwiggins, that I would enter into it with no other object; and, just as I stated here the other day—I said here the other day incidentally if I could make a dollar
1333 out of it for myself, *what* that was my right; I paid the stock
in, and it belongs to somebody, and if I can get it, why, I

might as well have it as anybody; I have a better right to it than anybody else.

Q. If you can make the stock valuable by this litigation and at the same time accomplish the other purpose, that is what you mean to say you will do?

A. Yes, sir. My principal object was to compel the payment of these claims; I know something about it, and I feel to some extent responsible. I urged men to go on the road; told them I believed they would get their pay. The men would have quit at one time only for assurances from persons that their pay would be good.

Q. What did Annabal say about your prosecution of the matter? You say you talked with him.

Objected to by solicitor for complainant.

A. Shall I repeat about all that I can remember that he said in every way about it?

Q. Yes.

A. He said they were going to have to pay these labor claims; they ought to have to pay them. I was a little surprised; I asked him what was the matter with him that he was taking such a stand now. He said that everybody was out with Henry now, all of them; they were all against him; going to make him pay if they could.

Q. Henry who?

A. Henry Crawford.

Q. Is that all he said?

A. Well, I don't know; there was a good deal of talk as we were on the road. He spoke about the claims; that they ought
1334 to be paid—these labor claims—that it was wrong, and so on, to not pay them.

Redirect examination by Mr. PIERCE:

Q. You have mentioned three claims, two of which you say were nephews of yours; do you know who they did the work for?

A. Yes, sir; two of my nephews; one of them sold hay to the company—ninety-odd dollars.

Q. To whom did he sell the hay?

A. He sold it to Mr. Foster when he was president of the road?

Q. To William Foster?

A. Yes, sir.

Q. Who did the others do their work for?

A. He was at work in April until the following February.

Q. Of what year?

A. 1881–'82.

Q. From April, 1881?

A. Yes; from April, 1881, to February 1882.

Q. Did he work for the company or work for some of the sub-contractors, or work for whom?

A. He worked for the railroad company.

Q. What did he do?

A. He was a bridge-builder, a carpenter, repairing anything that needed repairing, and repairing scrapers.

Q. So you still adhere to the statement you made on your other examination that your prime object in permitting the use of your name was to assist some of the creditors in collecting their debts against the company.

1335 A. Yes, sir; Mr. Wiley told me unless they put in the name of a tax-payer that the case would be decided—that the courts would hold against them.

Q. And that was really the sole inducement for your using your name?

A. Yes, sir; not the sole inducement.

Q. I will finish that. You say that was the prime inducement for using your name, and at the same time it occurred to you that if you could realize anything on the tax that you had paid for the stock, that you was willing to do that also?

A. Yes, sir; I had a right to it.

Q. You would not have gone into it simply to assert your rights as a stockholder?

A. Well, I don't know but I would; I think I would; I had a right to go in.

Q. There is no question about your right, you know.

A. Well, I think I would.

Q. On the same terms that they were going to use your name to collect the debts?

A. Well, I don't know that it would be on the same terms or not.

Q. How much tax did you pay, Mr. Swan?

A. I could not tell you; about $200.

Q. A little less than that, wasn't it?

A. It might be a little less and it might be a little more.

Q. Do you mean to say you would employ counsel to go to Indianapolis for the purpose of asserting your claim for less than $200 worth of stock after a very expensive litigation, paying attorneys' fees and costs?

1336 A. I don't say I would; I said I might.

Q. You said you had a right to?

A. Yes; you would say so yourself, wouldn't you?

Q. Yes; a man has a right to do so if he wants to. As a practical question, I want to put it to you whether you would have gone into the kind of litigation I have described—that is, if you would have employed counsel and taken the risk of paying the costs and all the trouble of going to Indianapolis to look after the litigation to take care of less than $200 worth of stock? I want to know that as an independent proposition.

Objected to by solicitor for defendants as calling for the operation of the mind of the witness.

A. I would not go into court and ruin myself, I am sure of that, if I knew it.

Q. Do you think that sort of litigation would ruin you?

Objected to by solicitor for defendants.

A. I don't know; it might and it might not.

Q. When did it first occur to you that you had some stock in that road?

A. It occurred to me when Mr. Wiley said that the court was going to hold that it didn't belong to the townships; then it would belong to somebody, and I would naturally suppose, or reasonably suppose, it would come to me.

Q. When was that; along in August?

A. I could not tell you when it was; I would not——

Q. It was along this last summer?

1337 A. It was during the spring or summer.

Q. Wasn't it along about the first of August—the latter part of July or the first of August?

A. I have nothing, Mr. Pierce, that I can call up the date from.

Q. It was last summer, at any rate?

A. It was last summer or spring, at the time of the conversation with Mr. Wiley.

Recross-examination by Col. COOPER:

Q. You say that hay was sold to Mr. Foster when he was president of the company—was that sold to the company?

A. Sold to the company. I sold him hay at the same time, and he paid me.

Q. Do you know of any other indebtedness of the company along the line of the road which was incurred back as early as 1882?

A. What men told me. Is that competent testimony?

Q. You can state what you know and how you know it.

Objected to by solicitor for complainant.

A. A merchant at Kickapoo had a grocery there. He said on the assurance of the company that he would be paid for his groceries he sold them to it; he sold out his establishment all but about $200; I think he sold about $1,200 to the boarding-house man, and ruined his business.

Q. When was that?

Objected to by solicitor for complainant as incompetent.

1338 A. He told me about a year and a half ago; it was when they were building the road south there.

Q. At the time Crawford was in charge?

Objected to by solicitor for complainant as incompetent.

A. Yes, sir; I suppose he was in charge at that time. It was after Mr. Foster went out, anyhow. A Swede that lived in Oxford *to* Goodland, he told me he boarded the men to the amount of $400. He put the last dollar he had—the last thing that he had—into his boarding-house, and the hands eat it up and left him without anything to keep his family, only his daily labor. He hasn't got his pay yet, and has put his claim in at Kentland last winter, I believe. I think it was for $400. And there was another Swede did work and board over there at the intersection of the Big Four. His claim was about $400, and he was working by the day; he wanted to go to farming; he could not get his money. All the money he had he put into provisions, and the men boarded and eat it up, and he was out.

Q. The men on the line of the road?

Objected to by solicitor for complainant.

A. The men on the line of the road, yes, sir; one lived at Oxford and one at Windom. I want to make a correction to my testimony.
I said there was not a man in our township knew that I
1339 had any connection with this suit until Friday morning. I
should have excepted my two sons that live with me.

Mr. **Pierce**: Those are members of your family and live with you?

A. Yes, sir; members of my family; no one out of the family.

The signature of the witness to above deposition is waived by agreement of counsel.

George C. Kimball, being recalled on behalf of the complainant, was examined in chief by Mr. **Pierce**, and testified as follows:

Q. Mr. Kimball, I want to ask you a few questions that I might properly have asked you when you were on the stand before, but you were in a hurry to get away, so I call you back now as our witness. You have already stated you are the receiver of the Chicago and Great Southern Railway Company?

A. Yes, sir.

Q. You are in possession of the property and operating it at this time?

A. Yes, sir.

Q I will ask you in the first place what value the road would have from Attica to Fair Oaks without any connection south of there?

A. I don't think it would earn its operating expenses.

Q. From Attica to Fair Oaks?

A. No, sir.

Q. I will ask you if you if you have given the matter any
1340 thought as to the value of that property at the time you went
down there and took possession of it as receiver.

A. Before being called in here last week I made some hasty figures, approximated on some of them, not knowing the distances exactly; I have these figures.

Q. I will ask you to state to the commissioner generally what your opinion was of the cost of the construction of that road from Fair Oaks to Yeddo.

Solicitor for defendants objected to the question on the ground that the cost of the road is not the question, but how much the road was reasonably worth in the matter of labor and materials.

A. I have prepared an itemized statement, taking into consideration the value of railroad ties and labor two years ago. You might say the price three years, without figuring anything for right of way, fences, or legal services, I make it $876,317; that is a very low estimate of what that amount of property could be placed there for.

Q. At the time during which the road was built?

A. Yes, sir.

Q. I will ask you the question as to what in your judgment that road was actually worth in the condition you found it when you went down there to take possession as receiver of the road?

A. Worth to take as property and operate it?

Q. As it then lay, without any extensions at either end, but the road as you found it?

1341 A. I would not agree to take it and operate it for the property.

Q. In other words, you don't think it was capable of paying operating expenses?

A. No, sir; I don't think it lay in the boots of any man to do it with the competition east and west and the surroundings. I don't think it could be done.

Q. What is the length of the road?

A. The distance shows by time-card and from my general knowledge it is 55 miles and a fraction from Fair Oaks to Attica and twenty-one and a fraction from Attica to Yeddo. But I have had it chained over; I haven't got the report from my engineer yet. I probably can wire and get it to-day if it is required.

1342 Cross-examination by Col. Cooper:

Q. You have made your estimate as to the cost of the road from Fair Oaks to Yeddo upon what hypothesis as to the time when it was built?

A. From my recollection, what I was paying for material about that time?

Q. About what time; the time it was built?

A. Yes.

Q. What years?

A. In fact, prices have not varied much in the past three years until within six weeks or two months—very little; there has been very little fluctuation.

Q. From that back to 1881?

A. No; back to 1881 they were higher than they have been for two years?

Q. How were they in the spring of 1882 and summer?

A. In 1881 and 1882 my recollection is there was very little difference.

Q. 1883, 1884, and 1885?

A. It begun to drop down.

Q. You understood from some one as to what time the road was built, what years, did you not?

A. Yes, sir.

Q. Whom did you understand was engaged in building the road or had built the road?

A. That Mr. Foster built a portion of it, and that Mr. Crawford afterwards built a portion of it.

Q. Now, at the time you first went over it—that was last winter, wasn't it?

A. Yes; I think in January, the early part of January; that is my recollection.

Q. Had there been any considerable amount of work done by the receiver from the time he was appointed up to that time?

1343 A. Maybe there had been some bridge-work done which could not be left, and some timber was on the ground for some other bridges that had not been rebuilt.

Q. I mean from the time the receiver was appointed up to the time you went over it there had been some done?

A. Yes, sir; and there was some timber on the ground for several bridges then.

Q. Your understanding of it was that at the time the receiver was appointed Mr. Crawford was still in possession as contractor, was he not?

A. I didn't know anything as to that.

Q. It had not yet been accepted by the company; you understood that, didn't you?

A. How is that?

Q. That the road at the time the receiver was appointed had not yet been accepted by the company.

A. No; I never knew as to that; I don't know that I ever heard any one express anything about it.

Q. How much did you allow per mile for the grading in your estimate of $800,000 and odd dollars?

A. Taking the average right through, and compiling them, it was $3,000 a mile.

Q. What kind of a country is it that the road runs through?

A. From Fair Oaks we will say to Goodland the majority of the work is pretty light.

Q. A prairie country, isn't it?

A. A good deal of it; I put that from ten to fifteen hundred dollars a mile; then I carried in my mind where the different cuts
were, and then when we get down nearer Attica the material
1344 is very hard material, and in some cases it had to be blasted;
I have tested that this summer in opening up gravel-pits
there, and I thought what would be fair as an average through would be $3,000 a mile.

Q. Take it from Goodland to Attica?

A. From Goodland to Attica is where the heaviest work is and the hardest.

Q. That would make the road about how much on the average per mile?

A. I think about thirteen hundred dollars a mile as I figured.

Q. About thirteen hundred a mile?

A. That is my impression.

Q. What was the average of the work—the cost of the work from Attica to Yeddo?

A. Well, I figured that $210,000 for the 21 miles; it was heavier work—more earth-work, heavy cuts—and I figured that 21 miles at $210,000.

Q. That would be only about ten thousand dollars a mile, would it not?

A. Yes, sir.

Q. You say it is heavier work than the other work.

A. Yes; but it is a shorter haul and easier material to work than that near Attica.

Q. Would it cost any more to do that work—I mean to build the road per mile from Attica to Yeddo than from Attica on to Fair Oaks?

A. It was not as good, and it had been in operation, and I allowed a fair percentage for the wear and tear on the rails, and the ties were very bad.

Q. The ties were in bad shape on that road?

A. Yes, sir; they were worse on that 21 miles between Attica
1345 and Yeddo than they were north of it.

Q. How much did you allow for the ties?

A. I allowed 35 cents apiece for the average of them right through.

Q. Take it from Attica to Fair Oaks; what kind of ties are they?

A. Well, I should say one-third hard wood and two-thirds soft wood—that is, hemlock and cedar for soft wood.

Q. One-third oak?

A. One-third oak.

Q. How much were the oak ties worth, say, from 1882 down to 1884?

A. Well, I placed them at 35 cents apiece. We are buying ties to-day for 33 to 35 cents apiece.

Q. Soft-wood ties?

A. No, hard wood, on the line. Why soft-wood ties are about as high as oak, Colonel, *is;* hard-wood ties are got down on the line of the road and hauled by the farmer or the woodsman to the track, and the soft-wood ties have to be brought here to Chicago, marked and freighted over to the road, so that it makes the soft-wood ties within a cent apiece or a fraction of a cent difference between the soft-wood ties delivered there and the hard-wood ties.

Q. The earth work, you say, was about $3,000 a mile?

A. I thought a fair average would be $3,000 a mile; that would be large for the work.

Q. The ties would be how much per mile—how many to the mile?

A. 2,640 is what I place it at.

Q. How much for the ties?

A. I call the ties 35 cents each—$51,740; there is 147,840 ties.

Q. How much per mile; that would be $924 for ties per
1346 mile, wouldn't it.

A. Yes.

Q. How much was your bridging?

A. The iron bridge over the Wabash, with the masonry, I put at $74,000.

Q. Where is that; is that on the line between Attica and Yeddo?

A. Yes; just north of that station.

Q. Between Attica and Fair Oaks, then?

A. Yes, sir.

Q. Do you know whether that bridge was built by the Block Coal Railroad Company or not?

A. I understood from Smith, the contractor of that bridge—he was building a bridge for me in Michigan at that time, and I understood he was building the bridge for Mr. Crawford. There are approaches to the same bridge that I estimated at $15,000; there is a long approach at the north end and a short one at the other end, and I approximated it at $15,000.

Q. How long are they?

A. I haven't the length, but I should say in the neighborhood of 200 feet, and on the north end 1,500 to 2,000.

Q. Did you in this iron bridge over the Wabash estimate how much superstructure there was of the bridge; how much that cost?

A. I think I figured the masonry about $30,000 and the iron bridges—I have not the exact figures on it, but I approximated it, from the bridge that I had built in Michigan I estimated it, but I don't remember just what the distinction was. I put them together,
the masonry and iron-work; it footed 74,000 and some odd
1347 dollars, in round numbers I put it at 74,000 dollars; then
those approaches at each end I put at $15,000.

Q. What I am asking about is the superstructure of the bridge—that is to say, the iron part of the bridge; how much did you figure that at?

A. Well, I don't remember without referring to my figures.

Q. Refer to your figures.

A. They are over at the office or in the waste basket; I haven't taken them out, I think. I didn't suppose it would be necessary as to that.

Q. I want to know exactly how you made up this statement; that is what I would like to know now.

A. It is approximated; not from actual measurement, you understand.

Q. The whole thing is approximated, isn't it?

A. No, sir.

Q. What part of it is not approximated; do you mean to say you measure the earthwork?

A. Well, the earthwork I approximated, because I didn't go over to measure up every cut or everything of that kind.

Q. You didn't measure any part of it, did you?

A. No, sir; but I should say it was a low estimate for the work.

Q. As a guess?

A. Well, from past experience in looking over work.

Q. As a guess from past experience?

A. Yes; that is what my judgment would be on the work if I was going to look it over and approximate it, without actual measurement.

Q. How would it be about the ties; you guessed that the ties
were according to the contract, didn't you; 2,640 ties to the
1348 mile?

A. I judged that from my renewing of the ties; I am putting in 300 to the mile; I am putting them in thicker than they were before.

Q. How many ties are you renewing; how large a portion of them?

A. O, I should think at least one-third.

Q. For what reason are you renewing them?

A. Because they were decayed.

Q. Over the whole line of the road?

A. They are scattered all along through the whole line; yes; they are worse south of Attica than north of Attica.

A. From Attica to Fair Oaks do they need replacing?

A. Some; yes; some of the soft-wood ties need replacing.

Q. In about the same proportion as below?

A. No; I think there is more below; and then there were more oak ties south of Attica than there were north of Attica.

Q. About what proportion of ties are you replacing between Attica and Fair Oaks?

A. Well, I should say very near a third.

Q. And you say you are doing that on account of the ties having decayed?

A. Yes, sir.

Q. Over the whole distance?

A. Yes, sir.

Q. Between those two points?

A. Yes, sir.

Q. What other bridges did you figure on and include in your estimate?

A. There is an iron bridge just north of the Wabash bridge, over a creek there. I don't know the name of it; that, with the approaches, I put at $12,000.

1349 Q. Any other bridges?

A. Then there is the Barnhart trestle just north of that.

Q. How much did you put that in at?

A. $2,500.

Q. How long is it?

A. 480 feet.

Q. What other bridges?

A. Malady trestle work. That is 1,065 feet.

Q. What did you put that in at?

A. $5,000.

Q. Is that all the bridges?

A. No; there is the Davidson trestle.

Q. How long is that?

A. 446 feet; that is $800.

Q. Any others?

A. Schroeder's trestle, 267 feet, $1,000; Pine Village bridge approach, approximated. 1,100 feet; that is a good deal better bridge; $9,000; the bridge over the Iroquois river, $4,000. Culverts and cattle-guards on the line I put down at $1,500. I think it is too low, though, upon reflection, for they were what I would call culverts. Quite a number more when I came to put my men on to them, but I put them in at $1,500. The depots and platforms I put at $4,200.

Q. How many are there of them?

A. I think there is seven.

Q. What else?

A. Then I have approximated the sidings at 6,000 feet; gradings and frogs and switches, and everything complete, at $9,000. Then the water stations I put in at $3,000. That makes it between Fair Oaks and Attica.

Q. How much did you put down for the metal on the road?

A. I put that down at $50 a ton, taking the average. There is some of it 52 pounds, some 56, and some 60, and some 65,
1350 and I put all the rails at $50 a ton, delivered there, without charging any freight on them.

Q. How much is iron and how much is steel between Attica and Fair Oaks?

A. Well, that I am not positive about, but I was putting it on the supposition that it was iron. There is a portion of it that is steel.

Q. How much of it?

A. I could not say as to that, sir.

Q. You can't say about how much of that road is steel?

A. No; I could not.

Q. You could not approximate it as well as you could the number of ties per mile?

A. No; I could not.

Q. Haven't you been putting down steel in place of the rails that were there between those two points?

A. Just out of Oxford it is laid with steel; that is all.

Q. You have not put in steel on the north end?

A. I say just north of Oxford, at its north end.

Q. None except that?

A. None except that.

Q. Have you put any new iron down?

A. No iron rails; I have put down steel south of there. I have laid something over six miles, I guess, south of Attica.

Q. In the years 1881, '2, and '3 how did iron rails run per ton?

A. Somewhere from fifty to sixty dollars; say an average perhaps of $55.

Q. For iron rails?

A. Yes, sir.

Q. How much was steel during that time?

A. Eight or ten dollars more.

1351 Q. From your observation of the road you would say that between those two points, namely, from Attica to Fair Oaks, a great portion of it was iron, did you not?

A. No; I should say the larger proportion of it was steel.

Q. More than half steel?

A. Perhaps about even from what knowledge I have had of it in walking over the different parts of it.

Q. About what weight per yard?

A. There is some steel there that will weigh 65 pounds a yard; some 60, some 56.

Q. How about the iron?

A. I should say, from the looks of the pattern, that the majority of the iron was 56 pounds; there is a little of it that was 52 or 54.

Q. In making your average as to the amount, what did you put the agerage weight of the metal on the road?

A. The average weight?

Q. Yes.

A. 56 pounds.

Q. 56 pounds to the yard?

A. Yes, sir.

Q. At 56 pounds to the yard, how many tons to the mile?

A. 88 tons.

Q. That would make from Attica to Fair Oaks the metal in the track, on your basis, amount to 4,840 tons?

A. 4900 and something, if I remember it.

Q. Figuring 55 miles?

A. It is 55 and a fraction; the fraction is towards 56; I figured it at 56.

Q. That would make 4,928 tons?

A. Yes, sir.

Q. At how much a ton did you put it?

A. At $50 a ton.

Q. Don't you know, Mr. Kimball, that in the year 1883
1352 that iron was very much lower than $50 a ton—was down [to]
less than $40 a ton in 1883?

A. I don't think it was as far back as that, if my recollection serves me.

Q. I am asking about 1883. Iron was at a high point, and steel, also, were they not, along in 1880 and 1881? And then they began to decline somewhat and went down until within a few months. Isn't that so; isn't that the curse of the market?

A. I don't take it as far back as that. I am speaking from recollection when we were talking with O. W. Potter and other people here about rails, and I was paying $65 for steel.

Q. In what year?

A. I think it was in 1882.

Q. What other elements went to make up your total contract price, in addition to those you have stated?

A. I figured the old road from Attica to Yeddo.

Q. In a lump?

A. No; I took the items and then placed them in a lump here at $210,000.

Q. Outside of those you have given, what else—anything?

A. There is track-laying, you know; you didn't ask about that.

Q. How about track-laying?

A. Track-laying and surfacing I put at $400 a mile.

Q. Was the road surfaced when you went over it in January, 1885?

A. Surfaced from the side. After laying the track they surface it and throw in the material from the side. In some places there had been material hauled in on fills; but I put it as a low estimate, $400, to do that work.

Q. What is the usual cost of track-laying?

A. Just simply track-laying?

1353 Q. Yes.

A. Somewhere from $300 to $350 a mile.

Q. What is the cost of surfacing or back-filling?

A. From $50 to $100 a mile.

Q. It was not very well surfaced, was it?

A. No; not first rate.

Q. Had the track been pretty well laid?

A. Very well, as far as laying, and the spacing of the ties was very good.

Q. How did you figure the cost of these bridges; did you get the contracts?

A. No, sir; I haven't seen them at all; I took the material that was in them—the quality and the quantity—approximating the quantity from the length, and then I have had some figures measured up to show the difference between filling an approach to these same trestles, you understand, with earth or renewing them with timber, so that I had a pretty accurate way of getting at that.

Q. In figuring the iron bridge over the Wabash how did you figure the foundations; did you know the depth of the river and so forth?

A. Well, I approximated it with the work I am doing to-day.

Q. Aren't you doing your work a good deal more substantially than this was done?

A. Yes; we are doing it more substantially, but I think they paid a price for having substantial work.

Q. You think they paid a substantial price for work that is not very substantial; is that what you mean?

A. Some of it was not first rate.

Q. And you figured on the basis that they had paid a round price for doing the work in the way in which it was done?

1354 A. No; I shade that a little from what I am doing now; I am taking the work that we are doing at this under crossing of the Wabash, you know, and estimate from that.

Q. How much did you allow in your estimate for the graduation, the earth-work, per cubic foot or per cubic yard, for the earth that was put in the bank or taken out of the cuts?

A. Now, you take the works out of Oxford, and if it was done at 25 cents a yard, they done it at a low figure: north of Oxford the work was very much lighter.

Q. How much did you allow a cubic yard for that work?

A. The majority of that work?

Q. On an average?

A. I have not, you know, the actual figures as to the quantities, but if they got the average of that work done for 20 cents a cubic yard through, I should say it would be a fair average; some of it, probably cost them more than fifty cents.

Q. How many cubic yards per mile did you average; what was the total amount of earth work in the whole work?

A. I didn't get at it in that way, because I havn't the actual measurements.

Q. Didn't you have the profile of the engineers?

A. No, sir.

Q. Haven't you got that?

A. I could not find it; I have been having one made this year. My understanding is that the engineer's profile was burned up at Attica; I had a man chaining it and making a new profile of the road this year.

Q. Didn't you have the engineer's field-books, and so forth?

1355 A. No, sir.

Q. Have you made any inquiry for them?

A. Yes, sir.

Q. Whom have you inquired of?

A. I inquired of Mr. Peters. I think Mr. Ranks found a profile on one part of the road, down at the old depot or freight-house, I forget which, or it may have come from the general office here; I cannot say. Anyhow, I remember his coming to me one day saying: I have found a piece of old profile," he said. I said, "Is it enough to save us any work?" He said, "I think they may just as well go through with the whole of it while they are about it."

Q. Have you never inquired for the engineer's field-books?

A. I asked Mr. Peters about them once, once or twice.

Q. What did he say?

A. I think he thought they were burned up at Attica, and some instruments I supposed the company owned I found were not there—a transit.

Q. How can you get at the exact amount of earth-work there is there without the engineer's field-notes?

A. We can get at it by the profile they make—that we are making this year.

Q. The number of cubic feet?

A. Pretty near.

Q. Is that all, Mr. Kimball, that went in to make up your estimate?

A. I will give it to you by item if you wish.

Mr. Gardner: How much did you figure it up?

A. I figured up, without any right of way or legal expenses, $878,817. That is what I actually consider a low estimate for the work.

1356 Col. Cooper: Do you know as receiver of this company how much of that work has not been paid for?

A. No, sir; I do not.

Q. Have you never looked into the matter of the indebtedness of the company for work and material?

A. Nothing; only what I heard stated there at Indianapolis.

Q. You never have made any examination at all of the claims for work and material in the matter of the construction of this road?

A. I did not know it was part and parcel of my duty?

Q. Were any of these bridges that you have given me, some eleven bridges, on the line of the road between Attica and Yeddo?

A. No, sir.

Q. Have you got your itemized statement there with you?

A. No; not my items. I have just taken out each item by itself to show what I have got on each one to make the total footing.

Q. In giving your testimony on cross-examination as well as on direct, you have been referring to a memorandum which you had in your hand, have you not, Mr. Kimball?

A. Yes, sir.

Q. Will you please give that memorandum, the contents of it, to the reporter as part of your evidence?

A. (Witness read memorandum as follows:)

" *Estimates of Cost of Fifty-six Miles of Road from Fair Oaks to Attica.*

Grading, $3,000 per mile, 56 miles	$168,000
5,000 tons of rails, average 56 lbs per yard, $50 per ton	250,000
1357 147,840 ties, 2,640 to the mile, 35 cents each	51,740
448,000 lbs. of spikes at 3 cents	13,440
709,632 lbs. of splices at 2½ cents	18,737
Track-laying and surfacing, $400 per mile	22,400
Iron bridge over Wabash and masonry (approximate)	74.000
Approaches to the above	15,000
Iron bridge over creek north of Wabash river and approaches	12,000
Barnhart's trestle, 480 feet long	2,500
Melady's trestle, 1,065 feet	5,000
Davidson trestle, 446 feet	1,800
Schroeder's trestle, 267 feet	1,000
Pine Village bridge and approaches, 100 feet (approximated)	9,000
Bridge over Iroquois river	4,000
Culverts and cattle-guards	1,500
Depots and platforms	4,200
Approximate sidings, 6,000 feet	9,000
Water stations	3,000
21 miles, Attica to Yeddo	210,000
Total	$876,317

Q. I want to ask you how wide the Wabash river is where it is bridged on this road?

A. I cannot tell you exactly; I think there are six spans of that bridge, and I don't remember the exact length of those spans.

Mr. Crawford: They are 150 feet each; it is about 900
1358 feet.

Col. Cooper: Do you say the bridge is six spans?

A. Yes; of 150 feet each, he says.

Q. Who says?

A. Mr. Crawford says, or Mr. Peters.

Q. What I want to ask you is, whether you know?

A. I say I have not measured the spans; but I should judge, from the looks of them that that was not far out of the way. I could not say whether they were 130 or 150; somewhere thereabouts.

Q. You don't mean to say that the Wabash river is 900 feet wide at a medium stage of water where this road crosses it, do you.

A. It is very wide there. The Wabash Railway Company's bridge is still longer than this; I should say six or seven hundred feet longer than ours, and they are only a quarter of a mile north of us or east of us.

The signature of the witness to above deposition was waived by agreement of counsel.

Fred. H. Peters, a witness called on behalf of the complainant, being first duly sworn, was examined in chief by Mr. **Pierce**, and testified as follows:

Q. What is your name?

A. Fred. H. Peters.

Q. Where do you live?

A. Well, I call where my folks live home; that is Manito, Illinois.

1359 Q. What is your profession?

A. Civil engineer.

Q. I will ask you if you were connected as a civil engineer with the Chicago and Great Southern railroad at any time? And, if so, state when your services began.

A. I began to work for the Chicago and Great Southern as chief engineer on the 31st day of March, 1883.

Q. How long did you continue in that service?

A. Until the first of June, 1884.

Q. You had charge of part of the construction of that road, did you?

A. Yes, sir.

Q. What part?

A. The part from Oxford to Attica, and there was some track laid after the time I took charge of it from Goodland north.

Q. You had charge of that as chief engineer, did you?

A. Yes, sir.

Q. Were you acquainted with Volney Q. Irwin?

A. I knew Mr. Irwin; yes, sir.

Q. James McCalmont?

A. Yes, sir.

Q. A. J. McDonald?

A. Yes, sir.

Q. And the contractors and sub-contractors generally along that road, were you?

A. Yes, sir.

Q. I will ask you to state what the general information was there after you went there to work, as to where the money came from that was paying for the construction of the road.

Objected to by solicitor for defendants.

A. When I went down there I had no definite information 1360 as to that. Mr. Crawford assured me that he had made arrangements, and the money would be forthcoming.

Q. Did he tell you where he had made arrangements?

A. I don't think he ever told me that; he may or may not; I don't recollect; he did not at the time I went down there, but along about some time in May it came to my notice that he was getting money of Drexel, Morgan & Co.

Q. Now, tell the commissioner just what you know about money coming there from Drexel, Morgan & Co. for the payment of the construction of the road?

A. Well, my information was not very direct. I was instructed by Mr. Crawford to make out the vouchers in duplicate, one of which was to go to Drexel, Morgan & Co.

Q. State whether they did go to Drexel, Morgan & Co.

A. I could not say as to that; the copies were both sent to Mr. Crawford by me.

Q. Do you know how the payments were made usually to the contractors?

A. I know of some of them being made by Mr. Crawford's check, signed by Mr. Dunham.

Q. Countersigned, you mean?

A. Countersigned by Mr. Dunham for Drexel, Morgan & Co.; that is my information with regard to the checks.

Q. That was Mr. A. S. Dunham, of Chicago, was it?

Objected to by solicitor for defendants.

A. I think so, but I would not be positive.

Q. As agent for Drexel, Morgan & Co.?

1361 Objected to by solicitor for defendants.

A. That is as I understood it.

Q. I will ask you if you do not remember Mr. Dunham being down there on the road?

Objected to by solicitor for defendants.

A. I met Mr. Dunham, yes, at Attica.

Q. Did he tell you who he represented?

Objected to by counsel for defendants.

A. Yes, sir; he said he was representing Drexel, Morgan & Co. of New York, and that they were putting some money into the road.

Q. And he was there to represent them in paying this money out?

Objected to by solicitor for defendants.

A. He was there to look after their interests. I don't know that he was there especially while the payment was being made.

Q. How did you make out these vouchers; you say you made them out in duplicate?

Objected to by solicitor of defendants unless the vouchers themselves are produced. They are the best evidence.

A. I made two voucher out, one of which was marked "duplicate;" they were both alike otherwise.
Q. You approved those vouchers for payment did you?
A. Yes, sir.
Q. As chief engineer of the road?
A. Yes, sir.
Q. I will ask you to state whether those vouchers were always correctly made out?
1362 A. They were; yes, sir; as far as I made them.
Q. That is, of course, what I am referring to; as far as you approved those vouchers and made them out and certified to them they were correct, were they?

Objected to by solicitor for defendants.

A. Yes, sir.
Q. I will ask you if they did not represent the exact price in every instance that was agreed upon between the company and the contractors.

Objected to by solicitor for defendants.

A. Yes, as far as I had information.
Q. What do you know about its being generally understood along the line of the road, particularly among the contractors, by Irwin, McCalmont, McDonald, and others who were doing the work on the road, that this money was coming from Drexel, Morgan & Co.?

Objected to by solicitor for defendants as leading and incompetent.

A. It was the common talk on the line. I could not say how much information the contractors had directly about it.
Q. But it was common talk along the line?

Objected to by solicitor for defendants.

A. Yes, sir.
Q. That what?

Objected to by solicitor for defendants.

A. That Mr. Crawford was getting money of Drexel, Morgan & Co.
1363 Q. On what?

Objected to by solicitor for defendants.

A. Presumably on bonds.
Q. On the bonds of the railroad company?

Objected to by solicitor for defendants.

A. Presumably so.
Q. Hypothecated to Drexel, Morgan & Co.?

Objected to by solicitor for defendants.

A. It never was brought to my knowledge directly that that was the case; but that was the common impression.
Q. That was the common impression along the line of the road among the contractors and others interested in the railroad?

Objected to by solicitor for defendants.

A. Yes, sir; I think it was.
Q. It was the general impression that money was being furnished by Drexel, Morgan & Co. on bonds being hypothecated to them to secure a loan?

Objected to by solicitor for defendants.

A. I think so; yes, sir.
Q. That was the general understanding among the contractors and others along the line of the road interested in the construction of the road, was it?

Objected to by solicitor for defendants.

A. I think so.
Q. Where were these payments made usually?
A. Well, the class of payments with which I was familiar
1364 were made at Attica as a rule—through the bank at Attica.
Q. They were made on these checks, were they—the class of payments you refer to?
A. Yes, sir; for several months—say for May, June, and July.
Q. Of 1883?
A. Of 1883; yes, sir.
Q. You say that for three months—May, June, and July, you think—money was paid by checks on the bank; how was it paid afterwards—that is, that part you had control of or charge of?
A. On one or two occasions Mr. Crawford brought the money down in currency.
Q. Who did he bring it from; do you know?
A. I don't know.
Q. He came to you himself and gave you currency to make payments?
A. He made payments himself as a rule, although occasionally I handled money for him.
Q. Do you remember any occasion of his giving money to you?
A. Yes, sir.
Q. In what amounts?
A. There was one evening that he gave me currency to the amount of somewhere from twenty-five hundred to thirty-five hundred dollars.
Q. To make what sort of payments?
A. To make payments on contracts to contractors who were not present when he was there.

Cross-examination by Col. **Cooper**:

Q. Were you chief engineer of the Chicago and Great
1365 Southern Railway Company during this period you were employed there?

A. Yes, sir; I was.

Q. Whom were you employed by—what individual?

A. I was employed by Henry Crawford, and a notice of my employment—a certificate, you might call it—was signed by Henry Crawford as manager—general manager of the Chicago and Great Southern.

Q. Did you know while you were on the line of the road who was the contractor, or whether the company was building the road itself? Did you understand about that?

A. No, sir; there were a good many different impressions as to that. I never had a clear understanding of that.

Q. But you were employed by Henry Crawford as general manager of the Chicago and Great Southern Railway Company, as chief engineer of that company?

A. Yes, the certificate that he gave me was made out on the letterheads of the Chicago and Great Southern; and signed "Henry Crawford, general manager."

Q. Did you ever see a construction contract between Henry Crawford and the Chicago and Great Southern Railway Company while you were on the road?

A. No, sir; I did not.

Q. Did you know that he had a contract?

A. No, sir; I didn't know it as a fact. I could not well know it without seeing the contract.

Q. He never told you?

A. No, sir; I think not.

Q. From whom did you take orders? Who was in general control of the railway company?

1366 A. My orders came from Mr. Crawford; Henry Crawford, as a rule.

Q. When you were paid, did you get your pay, as you understood it, from Henry Crawford or from the railway company? I mean to say did the railroad company pay you, or, if Crawford paid you, did you understand it to be money from the railroad company?

A. I considered that I was chief engineer of the Chicago and Great Southern railway, and as such would expect that my pay came from the Chicago and Great Southern Railway Company; that is as far as I ever analyzed it.

Q. Just state the condition of the road as to completion between Fair Oaks and Attica when you went on there; how much of the road had been built.

A. The road from Attica to Yeddo, a distance of about twenty miles, was built and in operation.

Q. That you understood to have been built before Mr. Crawford became connected with the matter?

A. That was my understanding.

Q. That was the Chicago and Block Coal railway?

A. Yes, sir.

Q. From Attica, north, how much of the road had been built and what parts had *it* been built when you came there?

A. It was built from near Oxford to some point north of Goodland.

Q. About how many miles, as near as you can remember?

A. The track was laid over probably twenty-five miles of it when I went there.

Q. And the bridging done and the surfacing and all that completed?

A. Partially done, not completed; no, sir.

1367 Q. How much was done and completed when you left there about the first of June, 1884?

A. The track was laid from Fair Oaks to Yeddo, a distance of seventy-six miles and a fraction.

Q. Whom did you succeed as chief engineer?

A. Mr. Baird—J. Q. Baird.

Q. Did he turn over to you any engineering papers when you succeeded him?

A. No, sir; not personally, but I found them on the line—papers.

Q. Did you make any estimate of the cost of the road between Attica and Fair Oaks?

A. I don't know that I did; no, sir.

Q. Did you look over any engineering papers with reference to the cost of the road, as estimated—the estimate cost of the road?

A. No, sir; not of that whole distance.

Q. Did you a part of the distance?

A. The estimates from Oxford to Attica were made by me altogether.

Q. Do you remember about how much those estimates were and what they were—I mean generally?

A. I say these estimates—I simply refer to the earthwork, and to that part of the bridging which was done by contract.

Q. Do you remember about how how much that earthwork was a mile?

A. My impression is it was $57,000 to one man for that distance, and about $10,000 to another.

Q. From between what two points?

A. Between Attica and Oxford.

Q. What is the distance?

A. Sixteen miles.

Q. That is for the earthwork and the bridges?

1368 A. No, that is simply earthwork.

Q. Is that or not the surfaced part of the earthwork on the whole line?

A. It is; yes.

Q. You had occasion frequently to go over the line of the road, had you not?

A. I had.

Q. Take it between Attica and Fair Oaks.

A. I had; yes, sir.

Q. What should you say was the average number of cubic yards per mile on the road?

A. 17,000 yards.

Q. Do you know about the average cost of the work per mile—the earthwork—while you were there?

A. Of that portion of sixteen miles I do; that is all the earthwork that was done while I was there.

Q. What was that?

A. About $4,000 per mile.

Q. That sixteen miles was the heaviest part and the most expensive earthwork on the whole line, was it not?

A. Yes, sir; that included the most expensive work; yes.

Q. That extra expense on that part of the road was occasioned by what?

A. By the heavy work necessary for getting out of the Wabash bottom onto the level of the country.

Q. Involving the carrying of the earth how far?

A. I don't think the whole exceeded 1,000 feet in any case, but there were very heavy cuts and fills to be made.

Q. From Oxford north the grade was much lighter, was it not?

A. Yes, sir.

Q. And also much cheaper, would it not be, on account of being able to make the grade from the side of the bank?

1369 A. Yes, sir; I think it was cheaper—it would be.

Q. How much per cubic yard do you remember between Oxford and Attica was paid, or was it done by the cubic yard?

A. It was done by the cubic yard, and my recollection is the 16 cents per yard payable in embankment and excavation both.

Q. That is, where there was a yard of excavation you paid 16 cents a yard, and then in the fill, if it was used in the road, it was paid 16 cents addition?

A. Yes.

Q. Both ways as they call it?

A. Yes, sir.

Q. Was the road entirely completed so as to make it a well-built railroad at the time you left on the first of June, 1884, from Fair Oaks to Yeddo?

A. No, sir; it was not; there was certain parts of it which was put in as temporary work.

Q. How much of it, and where?

A. This temporary work was between Attica and a point five miles north of Attica, and consisted of several trestles which were made of rough timber; the posts were cut, the caps being sawed timber and the stringers sawed timber.

Q. Had you ever been, prior to your employment on this road, an engineer in the construction of any other road?

A. Yes, sir.

Q. The term sub-contractor has been applied to Volney Q. Irwin, McCalmont, McDonald, and others; did you understand them to be sub-contractors or simply contractors with the company?

A. Well, I think at the time the work was done I understood them to be contractors of the company.

1370 Q. Directly?

A. Yes, sir.

Q. And did you ever give Henry Crawford, as contractor, a certificate, to your knowledge or recollection?

A. No, sir; I never did.

Q. Did he ever ask you for one?

A. No, sir; not in that form; I certified to certain work and materials having gone into the road, but my recollection is, not that it went in as an estimate to him as contractor.

Q. Did you make a certificate as to those other contractors from time to time—make certificates as to their work?

A. Yes, sir.

1371 Q. To whom did you certify to the railroad company of which you were the chief engineer? I mean as to McCalmont, Irwin, and McDonald.

A. I certified that those parties who had furnished work and material to the Chicago and Great Southern Railway Company were entitled to so much money under their contract. These estimates were sent to Mr. Crawford, and a copy, as a rule given to the contractor.

Q. From all you did as chief engineer and from all you saw, taken in connection with your work on other roads as engineer, your idea of it was that the company was building its own road through these contractors, was it not, while you were there?

A. That was my impression on the start, although afterwards I saw things that led me to a different belief.

Q. Did you ever understand it to be your duty to act as chief engineer between Crawford as contractor and the company the other party?

A. No, sir; I never did.

Q. Whatever Mr. Crawford directed you did?

A. Yes; that was the rule.

Q. Was there any exception to it?

A. I don't know that he ever asked me to do anything that I declined to do; there may have been some things he asked me that I never did, but I think of no instance especially.

Q. Was it not the general impression on the line of the road while you were there that the company was building its own road and that Mr. Crawford was in control of the company, and these gentlemen were working for the company, McCalmont,

1372 McDonald, Irwin, and others?

A. Yes, sir; that was the general impression, as far as I know.

Q. Was not that part of the work that was done by the company, hiring its own men, its laborers; wasn't there work of that kind done?

A. No, sir.

Q. Ties were brought there, as you understood, by the company?

A. Some of the papers of the company, some of the letter-heads which I saw, had Henry Crawford's name as contractor at the head of them. But the documents which I made out, as far as I recollect, were all made out as between the parties doing the work and the Chicago & Great Southern railroad.

Q. You knew much more about the affairs of the company, did you not, as between the company and Crawford, its contractor; you were in a position to know, were you not?

A. I should think so; yes.

Q. You say that there had been a loan obtained or money obtained from Drexel, Morgan & Co., as you supposed, presumably on bonds; did you know anything about that; did Mr. Crawford ever tell you?

A. No, sir; I don't know that Mr. Crawford ever told me in what shape the loan was made.

Q. Did Mr. Dunham ever tell you?

A. No, sir; I think not.

Q. You say that during May, June, and July, 1883, the money was paid by checks drawn by Mr. Crawford on Drexel, Morgan & Co., as I understand you?

A. I think they were checks on a Chicago bank; countersigned; that is my impression; I would not be positive about it.

1373 Q. How was the money paid after July, 1883?

A. On several occasions there was money brought down there in currency by Mr. Crawford; he came down there with money.

Q. Up to the time you left the road there had been a large amount unpaid, had there not, of work done?

A. Yes, sir; there had.

Q. Had the work stopped practically—that is, as to the construction—on account of the men being left without their pay?

A. Well, there was very little new work being done on that account, I presume.

Q. Hadn't a large number of men who had been working by the day there when you left gone without their pay for several months?

A. As far as I know, they had; yes, sir.

Q. Do you know to about what extent?

A. No, sir; I could not state.

Q. Wasn't it true during the time you were there, from the 31st of March, 1883, to June 1, 1884, that there was a lack of means to pay the men promptly as the work was done, they were behind in their pay?

A. The first lack of means which showed on the line was in payment of the estimate for August, I think, which was partly paid some time in September.

Q. That was the 31st of August, 1883?

A. Yes, sir.

Q. Well, now, on account of that lack of means, wasn't it true that it was more difficult—that is, that the cost of labor and of materials was enhanced because the company had a bad record as a paymaster?

A. I don't know that the cost of labor did increase; my opinion is material did to a certain extent.

1374 The signature of the witness to above deposition is waived by agreement of counsel.

1375 Mr. PIERCE: I give notice that I want to go to Indianapolis to-morrow morning to take the evidence of various witnesses on the part of the complainant Porter.

Col. COOPER: I want the record to show that I have called one witness from Omaha here and five witnesses from Indiana at the expense of the defendants in the case, for the accommodation of the counsel on the other side, as well as my own and that of the commissioner; that I have already suggested to [the] counsel on the other side that I am unwell and unable to go to Indianapolis to-night, except at the risk of my health or life, and that I have already suggested to counsel that, as I understand from them, they intend to take the evidence of Mr. Henry Crawford there, who is an important witness in the case; that if they will let Mr. Crawford's evidence be taken there, at Indianapolis, written out, and then allow me to cross-examine him here I have no objection; that Messrs. Harris & Calkins—I will rely upon them to attend to the cross-examination of any other witnesses who may be called at Indianapolis, but that as to Mr. Crawford I deem it my duty to my client to attend to his cross-examination, as neither Mr. Harris nor Mr. Calkins know about the testimony that has already been taken and I do, having been present at the taking thereof. I ask that this matter be submitted to his honor Judge Gresham as to whether I shall be compelled to go to Indianapolis to-night in order to cross-examine Mr. Crawford to-morrow, Mr. Crawford residing here and now being in this room at present.

1376 Mr. CRAWFORD: I want my position understood. I would infinitely prefer to be examined here rather than go to Indianapolis. It will be very inconvenient for me to go there. I simply want that my examination should be taken promptly and finished, so that I can attend to my own business, and if those counsel or either of them can come up from Indianapolis I would infinitely prefer it, and always did, and would, that the examination should take place here, and it is simply that I was putting myself to personal inconvenience so as to have them present when the examination went on.

The foregoing proceedings in relation to taking testimony at Indianapolis having been read by the commissioner to Judge Gresham, the court said:

"Under those circumstances you ought to examine him here; that is very plain."

JOSEPH K. BARRY, a witness called on behalf of the complainant, being first duly sworn, was examined in chief by Mr. PIERCE, and testified as follows:

Q. What is your name?
A. Joseph K. Barry.
Q. Where do you live and what is your profession?
A. I live at 860 Washington Boulevard, in this city; I am now

with the Chicago & Eastern Illinois Railroad Company, in the legal department.

Q. Where was your office about two years ago?

1377 A. Where it is now—123 Dearborn street.

Q. Are those the rooms that were occupied by the Chicago & Great Southern Railway Company at that time?

A. They were occupied by the Chicago & Indianapolis Air Line, and a portion of them by the Chicago & Great Southern.

Q. I will ask you if you remember being in the office with Mr. Starin about that time?

A. Yes, sir; Mr. Starin occupied one room, Mr. Shumway and I another room, and Mr. Crawford west of us.

Q. Whereabouts was the room the Chicago & Great Southern directors usually had their meetings?

A. It was the south room on that floor.

Q. To get to that room did they come through your room?

A. Yes, sir.

Q. Was that the only way to get to it?

A. I can't say it was the only way, but they generally passed in and out.

Q. It was usually open, was it?

A. It was a highway, a public thoroughfare.

Q. Do you know Henry Meiselbar?

A. Yes, sir.

Q. I will ask if you remember about two years ago there being a meeting of the board of directors of the Chicago & Great Southern Railway Company in the room in which they usually had their meetings?

A. I so understood it; they talked about it going in and going out, that they had been in to such a meeting of directors.

Q. Who were talking about it? Who did you see going 1378 in and coming out?

A. I think I saw Mr. Lyon; he was then in with us, and I could not say all; I know Henry Meiselbar went in through the room I occupied, and went out.

Q. I will ask you if you remember his coming out from the meeting?

A. Yes, sir.

Q. I will ask you if you remember his stating to you that he had just been in to a meeting of the board of directors of the Chicago & Great Southern, of which he was a director?

A. He did not address any remark to me; I sat at my table and he came out, and who were there I would not say, but he says, "We have got through with the meeting of the directors of the Chicago & Great Southern railroad, and I don't propose to continue; I propose to have my pay for serving as a director in this road after this." That was the way.

Q. About when was that?

A. I should think it was in May, but I am not sure about that; it was about that time—two years ago last May or June. I keep a diary, that I have kept for over thirty years, of the day and date of events of any importance which transpire all along, and whether I have got it down—I think I have, I may not have that, but I have the general course—I could tell along about what time it was.

Q. It was along about two years ago?

A. Yes, sir.

Q. Do you remember who else was present besides yourself and Meiselbar?

1379 A. I could not say; I think Mr. Raymond was there, and Lacey—Fred. Lacey. I heard them talking before they went in that they had a called meeting of the board of directors of the Great Southern.

Q. Did you hear them saying what the object of the meeting was?

A. No; I did not. It was a meeting of the directors, and when he came out he made the remark as I have told you.

Cross-examination by Col. COOPER:

Q. Mr. Henry Crawford had his law offices on the same floor, did he not?

A. On the same floor; yes, sir.

Q. Mr. Crawford had two railroad companies there, did he not—two or three making headquarters there that he was interested in?

A. He had the Indianapolis Air Line, that Mr. Starin was running; that was north of me in that room. And Mr. Crawford was running, as I understood, the Great Southern south of me.

Q. Didn't he have also the headquarters of the Chicago & Dyer railroad there?

A. Not that I know of; I don't recollect the Dyer.

Q. You are sure that this was in 1883?

A. I am quite sure of it. I heard them repeatedly talking about the Great Southern, and I heard them talking about who were directors; and more than once, I think, Henry Meiselbar said that "when we were directors of the Chicago & Iowa he understood that Hinckley did not pay much, but" he was a director of the Great Southern and he was going to have his pay for services that he rendered.

1380 Q. Did you ever see more than one meeting of the Chicago & Great Southern directors?

A. I didn't see any meeting, but they went in and out.

Q. Where was Lyon's office—D. J. Lyon; wasn't that in the same room where they had the headquarters of the Chicago & Great Southern—the south room?

A. No; I think not.

Q. Wasn't Lyon's office the south room on that floor?

A. Yes; he was in the south room; and then there was a north room, the room I was in, and a middle room and a room beyond, and I think there was one beyond that, at the extreme south.

Q. You were in the general office, where everybody came in, were you not?

A. Yes, sir.

Q. When a person would come into your room they could go north through a door into Mr. Starin's office?

A. Yes, sir.

Q. Or go south through another room into Mr. Lyon's office?

A. No; into a small room and then into Mr. Crawford's office, and then to Mr. Lyon's office, as I understand.

Q. How far south they went and through what rooms they went you don't know—to hold this meeting?

A. No; I don't know.

Q. You don't know whether they held the meeting in Mr. Crawford's office or Lyon's office, or whether they held it in the room further south?

A. They could not go farther south much.

Q. Lyon's room was farther south, wasn't it?

A. Yes.

Q. That is what I am asking. Whereabouts was it that they held this meeting of the board that day?

1381 A. Well, I can only tell what my impressions were. My impression was Mr. Crawford's office.

Q. In Mr. Crawford's office?

A. Yes, sir.

Q. Do you know whether Mr. Crawford was in there or not?

A. I think he was; I think I saw him in and out when the meeting was being called and after it was called; after it was over—after the directors came out.

Q. Who seemed to have the general control of the affairs of the Chicago & Great Southern while you was there; what one man?

Objected to by solicitor for complainant as not cross-examination.

A. Well, I should think Mr. Crawford; I don't know whether he was president or not; I think he had as much to say as any one in it.

Q. Were not these other gentlemen—men that you understood to be his employes or men that were acting there in his interest because of their connection with Mr. Crawford?

A. I could not say that, Colonel, because Meiselbar had no connection with Mr. Crawford, as I understood it, otherwise than his relation to the road as a director.

Q. Didn't he rent from Mr. Crawford or from the Chicago & Indianapolis Air Line road?

A. No.

Q. It has been so testified.

A. Not that I know of; I am not aware of it; I don't know anything about that; he and Moore had a little room off across the hall, and who he rented from I could not say.

1382 Q. Was Moore one of the directors, as you understood—Elisha Moore, Jr.?

A. Well, I am not prepared to say; he never expressed himself on the subject as Meiselbar did; he was very emphatic that he was a director, and he proposed to be paid for what time he was out.

Q. That is, Meiselbar?

A. Meiselbar.

Q. Are you absolutely positive that this was the Chicago & Great Southern, and not one of the other companies, that had the meeting that day?

A. I am very positive; very positive.

Q. Did you understand Mr. Meiselbar to have any pecuniary interest in the road—taking any especial interest in the road?

A. I am not prepared to say what interest he had.

Q. You understood, did you not, that Mr. Crawford, as between him and the board of directors, had the sole control and ownership of that road, did you not?

A. I understood that he had a majority of the stock or interest.

Q. And was in control of the affairs of the company?

A. I supposed that he was at the head of the concern.

Q. And that had been so from the first, had it not—from the time he first took it up? Do you remember when he took it up first, along about 1881?

A. I don't know that I do remember; he had schemes that I did not interfere with at all, and could not say; I knew it was a scheme of his.

Q. The whole thing?

A. I supposed he was the primary mover in it.

1383 Redirect examination by Mr. Pierce:

Q. I find by reference to the regular record-book of the company containing the proceedings of the board of directors a meeting was held in Chicago, April 18, 1883, and I do not find any other meeting; the next meeting occurred February 18, 1884. I will ask you now, refreshing your recollection, if that meeting was probably held at the time indicated here, on April 18, 1883?

Objected to by solicitor for defendants as not being proper re-examination.

A. Well, as to a month or so, I could not be positive about it. As I have said, I could go back to my journal and tell some of the circumstances that would fix it; it might have been April just as well as May—along about that time.

Q. You say Mr. Meiselbar repeatedly talked about his being a director of the Chicago & Great Southern railway?

A. O, I heard him, I will say, half a dozen times; he would come in there and talk about his relations with the Great Southern road; that he was a director, or about his being a director—his relation to the road as a director.

Q. He was insisting he was going to have some pay for acting as director?

A. He wanted pay for it.

Q. I will ask you if Meiselbar exhibited any feeling when he was talking about having his pay; about it costing somebody something?

A. He was about in his usual mood.

1384 Q. What is that?

A. Well, he was pompous and very much assured his services were important; I should conclude he considered he occupied an important position.

Q. He considered it an important thing to be a director of the Chicago & Great Southern, and thought he ought to have some pay for it?

A. He expected reward or pay—remuneration.

Q. He thought it was a great thing to be a director of the Chicago and Great Southern Railway Company?

A. From his appearance, I should think he did.

Q. From the way he talked about it and the way he acted?

A. Yes; I should judge he regarded himself as an important personage about that time.

Recross examination by Col. COOPER:

Q. Why did you in your direct examination fix the month of May as the time of this meeting?

A. I could not say about that; it was along in the spring; I thought it was in the spring.

Q. You say Mr. Starin was there, you think, and Mr. Lyon?

A. I think they both were there.

Q. Did you see Mr. Lyon go in?

A. I know Mr. Lyon came in the other way, but he generally came out; we were associated together very closely, very much, in other matters.

Q. Mr. Lyon did not have to go in through your room?

A. No; but he came into my room frequently, a dozen
1385 times a day, and I would go into his room.

Q. Did you see Henry Crawford, Jr., go into the meeting?

A. I think Henry was there.

Q. Do you remember a young man named George W. McDonald, from Attica; did you see him go in at this time?

A. I don't think I recollect him.

Q. Do you remember H. Moore, from Indiana, being there?

A He might have been there.

Q. What is your best recollection about it?

A. A stranger would not attract my attention at all, and I only was impressed with the fact that Meiselbar took a prominent position.

Q. Did you see Mr. Henry Meiselbar come out of the room with the rest of them when they came out?

A. I don't think I did.

Q. Did you see him go in with the rest of them?

A. I am not positive that I saw him go in.

Q. Do you remember whether Conkling was there—D. H. Conkling?

A. I don't think he was there.

Q. You don't think he was?

A. I don't think he was there.

Q. Who were the parties, now, as near as you can remember, that went in there?

A. Well, they were in my office talking before they went in—a number of them; I paid no attention to them; I recollect Fred. Lacey was there, and I recollect when Meiselbar came in and made some remark about going in to the meeting, and that they were going in; when they came out he made the remark that he did. Not to me.

Q. Do you remember anybody but Lacey and Meiselbar 1386 and Henry Crawford, Jr., and Starin going into the room?

A. I could not particularize them; there was a number went in, but my attention wes not called to them from the fact I had no interest in them at all.

Q. You were associated with them in the offices there?

A. Not in connection with the Great Southern?

Q. I know, but in connection with other matters?

A. Yes; I was with Mr. Shumway.

Q. Did you know who the board of directors were?

A. I did not. I never heard them mentioned.

Q. Do you think it probable that this matter on the 18th of April, 1883, was entered in your diary?

A. I don't think it is probable I entered anything that Meiselbar said, but as to the outlines of events in the office, I generally make a note of; anything of importance.

Q. Will you please examine your diary for 1883 and see if there is anything in your diary with reference to a meeting of the Chicago & Great Southern directors?

A. I will.

Q. And, if so, bring it down and produce it here before the commissioner some time this week?

A. I will do so with pleasure.

The signature of the witness was waived to the above deposition by agreement of counsel.

Adjourned to Tuesday, November 24th, 1885, at 10 o'clock a. m.

1387 TUESDAY, *November 24th*, 1885.

Parties met pursuant to adjournment at 10 o'clock a. m.

Present: R. B. F. Pierce, Esq.; Henry A. Gardner, Esq., and —— Butler, Esq., solicitors for complainants, and Col. John S. Cooper, solicitor for defendants, and Henry A. Gardner, Esq., solicitor for [the] Chicago and Great Southern R'y Co.

HENRY CRAWFORD, a witness called on behalf of the complainants, being first duly sworn, was examined in chief by Mr. PIERCE, and testified as follows:

Q. State you name and place of residence, Mr. Crawford.

A. My name is Henry Crawford; I reside in Chicago.

Q. How long have you resided in Chicago?

A. Since 1869, I think.

Q. Where did you reside previous to that time?

A. In Indiana.

Q. I will ask you when you first had your attention directed to the Chicago and Great Southern Railway Company, known then as the Indiana and Chicago Railway Company.

A. In June, 1881.

Q. Who first called your attention to this road, Mr. Crawford?

A. My impression is that my attention was first called to it by a visit to my office of George Hardy and Mr. Little, who were residents of Goodland, and stated they were directors in that company.

1388 Q. What did they state was the object of their visit to you?

A. They wanted me to purchase the stock of the road and build the line.

Q. Who at that time were the officers of the company, if you remember, Mr. Crawford? Do you remember who was the president of the company?

A. At that time Mr. Foster was the president of the company, as they stated to me, and he subsequently stated.

Q. When did you next have anything to do with any of the officers of that company?

A. My impression is that I declined to have any negotiations either with Mr. Hardy or Mr. Little in the absence of Mr. Foster——

Q. Who was the president of the company?

A. Who was the president of the company, and, they told me, the most largely interested. I think the result of it was that in a few days Mr. Foster came to Chicago and saw me at my office.

Q. What did he say to you—that is, Mr. Foster—about taking hold of that road?

A. It was his desire, and it was for that purpose that he came up to induce me to buy out the stock of that corporation. He stated that they had gone as far as they could with the project, relying on their own means down there.

Q. What did he say they had done up to that time?

A. They had procured some rights of way; they had graded some low, light work north of Goodland, and they had begun some work south of Goodland.

1389 Q. And he represented to you then that they had gone as far as they could?

A. Yes, sir.

Q. And that they had exhausted their means?

A. Yes, sir.

Q. What was the name of the company at that time?

A. The Indiana and Chicago Railway or Railroad Company—I have forgotten which.

Q. And where was the line?

A. He exhibited to me a certified copy of the articles of association which described the chartered line as beginning at Attica on the south and running northward to a point on the Indiana State line to South Chicago.

Q. How much work did they represent they had done on the road at that time, Mr. Crawford? How much money did they say they had expended?

A. I don't think that they stated to me exactly how much money they had spent. I rather gathered from putting together what Mr. Foster told me with what had been told me by the others some views of my own as to how much they had spent, but I cannot state that they told me precisely, either of them, how much had been spent on the enterprise up to that time.

Q. I will ask you if at that time you had any interest in any railroad down in that direction.

A. I had.

Q. What railroad?

A. I had bought prior to that time the entire stock of what was then known as the Chicago and Block Coal Railroad Company, formerly the Indiana North and South railway; that had a
1390 chartered line from the Ohio river to Lake Michigan. It
had actually been completed from Attica to Yeddo, a little short of twenty-two miles, I believe. The right of way from Yeddo southwardly to Brazil had been practically all obtained, and a large amount of work done from Brazil northward.

Q. To Yeddo?

A. Towards Yeddo. The work that had been done was substantially all between Brazil and Rockville.

Q. What did Mr. Foster say to you at that time about that railroad? Did he express any purpose of consolidating the two lines?

A. No; he knew that I was the owner——

Q. He knew you owned that property?

of that property, and his desire was that I should buy the stock of the Indiana and Chicago Railway Company rather than build a line under the charter of the Chicago Block Coal Company through the same territory.

Q. Did you then go to look over the line of the road, Mr. Crawford?

A. I never did.

Q. You did not?

A. That is at that time or for some time afterwards.

Q. What was the result of your negotiations with those gentlemen about that line of railroad?

A. There was no result of my negotiations with Mr. Hardy or Little. The result of my negotiations with Mr. Foster was that on the 23rd day of June, 1881, I entered into a written contract, the original of which he produced and is a part of his examination.

Q. You may go on now and state what you did, Mr. Craw-
1391 ford, in regard to furnishing money for the construction of
the road—the Indiana and Chicago railway, I mean.

A. After that time I furnished a very large sum of money to be devoted to the construction of the line north of Attica.

Q. Do you remember when you began to furnish money for the road?

A. Almost immediately after the June contract, I think.

Q. Of 1881?

A. Of 1881.

Q. I will ask you if you had any particular arrangement under which you furnished the money to construct that road?

A. I don't know what you call a particular arrangement. I went on and furnished the money, at first simply because I was acting under the impression that I practically owned that piece of property, and while I was not formally in control of it, yet that whenever I desired to control it that the control was obtainable. That matter continued in about that shape, a large amount of supplies being contracted for and shipped and paid for and sent down on the line, and then, as far as the grading was concerned, that was being prosecuted under Mr. Foster's management, and I sent the money down from time to time to pay the bills there.

Q. To whom did you send the money, Mr. Crawford?

A. To Mr. Foster. That continued, I should say, until along in the early winter of 1881.

Q. Was there any change made in the line, Mr. Crawford?

A. There was a change made in the line after it crossed the Iroquois river, I think.

1392 Q. That is north of the Iroquois?

A. Yes; the former line, as I understood it, had been designed to be built, It had never been surveyed north of the Iroquois river, but was chartered to build across all the east and west lines in Lake county, Indiana, coming clear up to almost in sight of Chicago; and at that time I was very largely interested in the Chicago and Indianapolis Air Line road that was being built, and the road was changed so as to make as quick a connection as possible with a road leading into Chicago, instead of building a long, worthless piece of road up to South Chicago. I think that is the only change. The road from the Iroquois river to Oxford was built, as I understand it, upon a profile that had been settled on before I had anything to do with the property.

Q. Built, in other words, upon the original profile?

A. Yes, sir.

Q. Now, you say you sent this money down to Mr. Foster from time to time to pay for the construction account of the road. I will ask you what obligations the company executed to you, if any?

A. None whatever.

Q. How was this money expended?

A. Well, it was expended, as far as I know, in the purchase and payment of right of way, purchase of timber, and for the payment of men that were grading the line.

Q. And what receipt or vouchers were taken for the money that was expended?

1393 A. Mr. Foster took the vouchers in the name of the Chicago and Great Southern Railway Company, approved by him. That was the habit of doing the work.

Q. I will ask you now the general question, Mr. Crawford, what your custom was during your whole connection with the construction of that road in regard to the taking of receipts or vouchers for money expended on the road.

A. I don't think that there was ever any change whatever in the method of doing that. The vouchers, from the beginning of my advancing money in the spring of 1881 down to the very last, were in the name of the Chicago and Great Southern railway, and approved variously; sometimes by Mr. Foster, sometimes by Mr. Conklin, sometimes by Mr. Peters, sometimes by my son, sometimes by Mr. Starin; in very rare instances approved by myself. Then the habit of the office was to stamp the receipts, after they were paid, with an ink stamp, that the payment had been received from me.

Q. What was said, Mr. Crawford, if anything, at any time by the officers of the company about giving you some evidences of debt aside from these vouchers, or some securities for the money you were advancing from time to time?

Solicitor for defendants objected to the witness stating what was said by the officers when no official action was taken.

A. In the fall of 1881 times financially were getting very squally, and I had put a large amount of money into the work, and I desired that they should give me some bonds on which I could 1394 raise money, both [for] the purpose of putting into new work north of Attica as well as for the purpose of meeting obligations for the purchase of the Coal road. That is the only instance where there ever was any talk between myself and the officers of the Great Southern Railway Company at that time with regard to giving any security. I never asked the company for any note, nor was there ever any talk of that kind.

Q. Now, Mr. Crawford, you may go on and state what was done about the execution of the mortgage and the issuing of the bonds upon that property.

A. Mr. Foster informed me, at our interview in June, that the board of directors of the company——

Q. That was June of 1881, was it?

A. Yes; had passed resolutions directing the issue of bonds secured by mortgage on the line. After I became the owner of the stock by purchase on the 23rd of June Mr. Foster either sent or delivered to me a copy of the resolutions of the board, directing the issue of the bonds, and asking me to examine them with a view to making any suggestions, if I thought any were desired, in order to make a security such as would be legal and marketable. I think I did suggest some alterations in the resolutions, and, at his suggestion also, I think I drew up the form of the mortgage to Mr. John C. New as trustee.

Q. That is the mortgage that was afterwards executed by the railway company?

A. That is the mortgage that was afterwards executed.

Q. And the one we are seeking to foreclose in this cause?

1395 A. The same.

Q. What was the date of that mortgage, Mr. Crawford?

A. My impression is the date of the mortgage is the first of November, 1881.

Q. Now, I will ask you to state when and under what circumstances the first million of bonds was delivered to you—in other words, give a history of the execution and issuing to you of the first million of first-mortgage bonds on this property.

A. As I have already stated, I advised Mr. Foster that, considering other demands upon me for money, that the Great Southern enterprise was taking a good deal of money out of me, and that the securities which I had were declining very rapidly in price, contrary to my expectation, and that in order to keep on with the work that I must have some bonds to get fresh money on, as well as to make some money arrangements to take care of the obligations for the purchase of the Coal road, and it was under that understanding with him that I should have the securities; that he executed a million of these bonds, and, I think, as he stated, I was not here when they were actually signed up by him. My impression is that I was in New York, and that when I got home Mr. Starin, I think, had a million of bonds in our safe; in either the last part of November or the early part of December, 1881.

Q. Mr. Foster has stated in his evidence here, as I remember it, that at the time the company was preparing to execute the mortgage and issue those bonds to you that you had furnished
1396 a statement that you had expended and incurred obligations amounting to about $400,000; do you remember that, Mr. Crawford?

A. I do not remember furnishing any written statement to that effect. I think it very likely that I stated to Mr. Foster in a general way the amount of money I had already paid out and had obligated myself for. I do not now recall that I furnished any written statement.

Q. I don't know that he said that it was a written statement, but he said you had made a statement to him about the amount of money you had expended and obligations you had incurred.

A. I think that is probable.

Q. Amounting, as he said, if I remember right, to about $400,000. Do you remember about how much it was at that time?

A. My impression is that up to that time I had not spent up to $400,000, although I had spent considerably over $300,000; but I had obligated myself for very much more than $400,000.

Q. Then, for the purpose of securing you in the money you had spent and obligations you had incurred, and to raise fresh money to go on with the construction of the road, you were furnished with this million of bonds?

A. No, sir; that is hardly correct.

Q. State just how it was.

A. Mr. Foster was a little in error, I think, in his recollection of the exact nature of that transaction.

Q. Give us your version of it.

A. My very clear recollection of it is that the first purpose
1397 I was to devote these bonds to was to secure the payment of the unpaid purchase-money of the Block Coal road.

Q. How much was that?

A. Well, it amounted at that time, I should say, to not less than

$150,000, then either actually due or to become due in a few days; then, secondly, that I was to have whatever was left after the first pledge for the Block Coal road matter for my own protection for what I had paid and what I was to pay.

Q. While it is not in order, before I forget it, I want to ask you right here what the price was you paid for the Chicago and Indiana Block Coal road?

A. That is not the name of it.

Q. Well, whatever it was.

A. Chicago Block Coal railroad.

Q. Chicago Block Coal road. I mean the line of road extending from Attica down to Yeddo.

A. The contract price was $200,000, with interest; the actual price that was paid, with included interest, was, I think, about two hundred and seventeen thousand and some hundred dollars.

Q. From whom did you buy that road?

A. I bought the road from A. J. Dull and Henry McCormick, who were the main people interested, although there were some others that had some interest. Mr. Butler here had a share of stock, for instance, and some others.

Q. Through whom did you negotiate that sale—that is, who represented Dull and his associates; McDonald and Butler, was it?

A. No, sir.

1398 Q. Who was it?

A. I don't think McDonald and Butler had anything to do with the actual negotiations; they had been previously concerned in the foreclosure, and represented Mr. Dull; but I think that in the earlier stages of the negotiation the party that I met was Mr. Henry McCormick, and my judgment is that Mr. John N. Jewett, of Chicago, represented him.

Q. Represented who?

A. Mr. McCormick.

Q. Then your negotiations were with Mr. McCormick and with Mr. John N. Jewett, of Chicago?

A. That is my recollection.

Q. Butler and McDonald had foreclosed the mortgage as attorneys?

A. Yes, sir.

Q. State what you know about their being custodians of the proceeds of sale when the matter was finally closed up.

A. My impression is that the stock was all of it left in the hands of Messrs. McDonald and Butler until the final adjustment of the matter, in January, 1883. I think, then, that they sent the stock on to Mr. Dull, on our joint request, and Mr. Dull delivered it over to Drexel, Morgan & Co.

Q. At the time these bonds were delivered to you—this first million you have testified about—I will ask you what official connection, if any, you had with the Indiana and Chicago Railway Company?

A. Not the slightest.

Q. What was the date of the change of name, if you remember?

A. July, 1881.

Q. Changed from the Indiana and Chicago to the Chicago
1399 and Great Southern Railway Company?

A. Yes, sir.

Q. You had no official connection whatever with the railroad company, you were not a director, and held no other official position of any kind in that corporation at that time?

A. I did not.

Q. You did not until when?

A. I was president, I think, for four days in March, 1882, and director.

Q. Give the dates; from March what?

A. Three days, I think; March 15th to March 18th. I then was neither director nor president until April, 1883, I think.

Q. Who was elected president of the company after you went out—when you went out on the 18th day of March?

A. Mr. William A. Starin.

Q. That is the Mr. Starin who has testified in this matter, is it?

A. Yes, sir; the same.

Q. After you received these bonds tell us what was done with them?

A. Do you speak of the first million?

Q. The first million, yes.

A. The first million of the Chicago and Great Southern railway bonds were delivered to me somewhere about the first of December, 1881; they remained in my possession until the 27th day of January, 1882. In December, 1881, the amount of the note which I had given for the purchase of the Block Coal Railroad Company had matured and was unpaid. I think I paid, either at that time or very shortly afterwards, a certain sum of money on it; I then met Mr.
Dull in New York, and explained the situation to him fully;
1400 that I was utterly unable to pay that note, and leave me any
ready means with which to go on with the work of constructing the line from Attica north, and asked that he should extend the time of payment. He declined to do that without more security. The result of it was——

Q. What security at that time did he have?

A. He had no security except my personal obligation, and the entire stock of the Chicago Block Coal Railroad Company that was deposited in the hands of McDonald and Butler, until the payment was made for it. The result of the interviews which I had with Mr. Dull in New York was that Mr. Dull, Mr. John N. Jewett, of Chicago, and myself, met in New York somewhere, probably two days before the 27th day of January, 1881, and after a good deal of persuasion on my part Mr. Dull agreed that he would not press for payment of the balance due on his obligation if I would deposit with him as additional collateral every dollar of the then issued bonds of the Chicago and Great Southern Railway Company, and every dollar which I had of the stock of that company, and would, by an agreement with Mr. New, the trustee, prevent the issue of any more bonds. That agreement I——

Q. You acceded to those demands, did you ?

A. I had to ; there was no escape from it ; and I lodged with Mr. Jewett, as representing Mr. Dull, the entire amount of stock which I had bought from Mr. Foster and his associates. I also lodged directly with Mr. Dull the entire one million of bonds that
1401 had been delivered to me by the Chicago and Great Southern
Railway Company, which were then on deposit with the Mercantile Safety Deposit Company at 120 Broadway. I also, with Mr. Jewett and Mr. Dull, went to see Mr. John C. New, trustee, at his office, at the corner of Nassau and Pine streets, in New York, and in his office Mr. Jewett drew up the paper that had been introduced in evidence, whereby Mr. New agreed not to certify any more bonds than the one thousand already certified, except upon the request of Mr. Dull.

Q. How long did those bonds remain in pledge to Mr. Dull ?

A. The bonds and the stock both remained in continuous pledge to Mr. Dull until the last payment had been made upon the Block Coal purchase, which was, I think, on either the 3rd or the 5th day of January, 1883. On that day, in my presence, Drexel, Morgan & Co. paid $132,379.99, which was the amount then remaining unpaid, with interest, on that purchase, and then, in my presence, they turned over to Drexel, Morgan & Co. the million of bonds which I had pledged the year before to Mr. Dull, and also the stock which I had pledged to him.

Q. Mr. Crawford, I will ask you if you have the contract which you made with Drexel, Morgan & Co. under which they got possession of these bonds and stock ?

A. I never had any contract signed by them. The contract which I had with them was a single copy, and that they retained ; but
they gave me a letter-press copy, verified in the manner you
1402 see, by the original signature of Mr. Wright, who is one of
the partners of Drexel, Morgan & Co., and which I now produce as being an exact copy of the contract, except the signatures, and being the only one which I ever had.

Q. Who attached the signatures to it ?

A. I wrote the signatures there simply to make the thing complete. I wrote both the signatures there. The balance of the paper is, all of it—this part of it (indicating) is—in the handwriting of a copyist in the office of Drexel, Morgan & Co., and is a letter-press copy of the original contract. Then this part here (indicating), being the words, "A true copy of the original. D., M. & Co," is all of it in the handwriting of Mr. Wright—J. Hood Wright—who was a partner of Drexel, Morgan & Co.

Q. You have examined that, of course. I will ask you if that is a true and correct copy of the contract ?

A. I stated it was a letter-press copy, and if the press copied truly that is.

Solicitor for complainant offered in evidence the paper produced by the witness, which is hereto attached, marked "Complainant's Exhibit 3."

Q. Now, Mr. Crawford, this contract that has just been offered in evidence is the one you made with Drexel, Morgan & Co., and under which they obtained possession of those bonds and stock?

A. Yes, sir.

1403 Q. I will ask you to state how much money Drexel, Morgan & Co. furnished to you under the contract.

A. Unfortunately for me, not as much as was agreed. Their contract was to furnish me $400,000, the last $50,000 after the entire track had been connected at Attica by a certain time, and in consequence of the freshets in the Wabash river and other delays that are always incident to the building of a railroad the time expired, and they declined to give me the last $50,000, which I had relied on very largely to clear up all the debts of the line, and they only furnished me a few cents short of $350,000, the exact amount of the checks being $349,999.56—44 cents less than $350,000.

Q. Between what dates was that money furnished?

A. The money was all furnished, I should state generally, the dates not being here to remind me, between the 5th day of January, 1883, when the first payment was made to Mr. Dull of 132,000 and odd dollars, down until August or September of that year.

Q. How was that money furnished, Mr. Crawford? I wish you would state a little fully and particularly just how they furnished the money, for what it was furnished, and for what it was used.

A. The contract provides that all the moneys up to the last payment should be furnished exclusively for the purpose of going into the work. They appointed originally Mr. Roswell Miller, who was at that time treasurer of the Chicago and Western Indiana railroad, as their agent to superintend the expenditure of the money and the method of drawing the money, so that a voucher for work or 1404 material was made out, approved by either the superintendent or the engineer, whoever had charge of the work and knew of its correctness. I then drew a check on Drexel, Morgan & Co. that had to be countersigned by Mr. Roswell Miller, and that was handed to the creditor. In other instances, where it was for work, I had to spend the money originally and pay for it, and then produce the paid vouchers, and a check would be drawn to my order to repay me for the exact advance. Then the vouchers were made out in duplicate during this time, and there was deposited with Mr. Roswell Miller a duplicate voucher for every expenditure, so as to balance his check account. That embraces the entire transaction with Drexel, Morgan & Co., with the exception, possibly, of five payments, the first being a payment made by Drexel, Morgan & Co. directly to Mr. Dull on the 5th of January, the others being checks which I drew to pay Mr. Roswell Miller, first for his services in this matter, and afterwards two checks, for $500 each, to Mr. A. S. Dunham, who was his successor as the representative of Drexel, Morgan & Co. When Mr. Roswell Miller moved to Milwaukee Drexel, Morgan & Co. appointed Mr. A. S. Dunham to supervise the expenditure of money.

Q. Mr. Crawford, under that contract of Drexel, Morgan & Co. you were to put in how much money along with theirs?

A. I was to put in by the contract, in addition to all that I had put in before—I was to put in on that part of the work between Oxford and Attica $50,000 fresh money before I was entitled
1405 [to] the next to the last payment of $50,000.

Q. State how much of that money you put in.

A. I put it all in, and a great deal more besides.

Q. That is, $50,000, as you had agreed to do?

A. Yes, sir.

Q. I will ask you now, Mr. Crawford, how much money you put in altogether, into the Chicago and Great Southern railroad, how much you have spent?

A. The entire outgo of the Chicago and Great Southern Railway Company, excluding interest on my own means, and excluding anything for services for myself or my son, who was almost constantly on the work as superintendent, is about, I think, $960,000.

Q. And how much including interest?

A. Well, including interest at six per cent., it would amount, I presume, to over $1,100,000, and this calculation does not take into account $60,000 or $70,000 of debts that are unpaid, that the creditors hold me personally for in addition. I instance those debts.

Q. What are they?

A. The Smith Bridge Company claim that I am personally responsible for to the amount of $21,000 and some hundreds, besides interest upon the balance due to them.

Q. On that Smith bridge contract I will ask if they hold any guaranty from you for the payment of that money?

A. The original contract was guaranteed by me, one of them. They claim the other is. As a mere matter of memory I have forgotten that, if it be true, and I have not seen what is called
1406 the Pine creek bridge contract, and it may be that that is correct.

Q. But do you remember that you guaranteed the payment of the contract price of the Wabash river bridge?

A. The Wabash bridge, yes.

Q. What does that amount to?

A. My impression is that the balance claimed to be due the bridge company is twenty-one thousand and some hundred dollars; I can tell you what it is. (Witness refers to paper.) $21,637.54. In addition to the claim of the Smith Bridge Company, the Ohio Falls Car Company, for a purchase upon equipment, hold my obligations for $22,691.48. The Bessemer Steel Company, Limited, of Pittsburgh, represented by Messrs. Jewett and Larnod originally, and subsequently by Mr. Jewett alone, hold my personal obligations for the balance due to them for rails furnished to the amount of $15,000 and interest. The Chicago, Rock Island and Pacific Railroad Company hold my personal obligation upon an engine purchased for the Chicago and Great Southern Railway Company, on which they have obtained a judgment against me, amounting to $2,000 and interest, making a total of contingent liabilities that I am still under of over $60,000.

Q. Mr. Crawford, state a little more particularly how you have expended this sum of over $900,000.

A. I don't know as I understand your question.

Q. Where has the money gone?

A. It has gone into the property, every penny of it.

1407 Q. Into the property of the Chicago and Great Southern Railway Company?

A. Yes, every penny of it; I never got, directly or indirectly, a single cent at any time or in any form out of the Chicago and Great Southern Railway Company.

Q. Then these figures you have given us represent actual amounts honestly expended in the construction of the Chicago and Great Southern Railway Company?

A. They do.

Q. Now, Mr. Crawford, following up the history of these bonds, they went into the hands of Drexel, Morgan & Co. under the contract which has already been given in evidence; how long did they remain with them, if you know?

A. I can only state that from what others has told me. I never saw a dollar of the Chicago and Great Southern Railway Company bonds after the 5th day of January, 1883, when I deposited the million of bonds with Drexel, Morgan & Co., or, rather, when Mr. Dull brought them over with me from the Safety Deposit Company at 120 Broadway and delivered them in the banking office of Drexel, Morgan & Co. From that day to this I never have seen the bonds.

Q. I want to ask you now about the other $200,000 of bonds that went into the hands of Drexel, Morgan & Co.; I wish you would explain how they got into their hands.

A. They got into their hands in this wise: As you will perceive by reading my contract with Drexel, Morgan & Co., they were to have, as collateral security to the money they advanced, every dollar of stock of the Chicago and Great Southern Railway 1408 Company and every dollar of bonds. When the road was just connected at Attica it was about February, 1884, and I was very anxious to make some negotiation for the sale of the bonds, or for a loan upon the bonds, that would pay up the past-due obligations which I owed to Drexel, Morgan & Co. and pay up all the debts and enable the work to be prosecuted still further southward, and I had the board of directors pass the resolutions with regard to the issue of the $200,000 bonds, the $1,200,000 of income bonds, and the $1,200,000 of stock, not to get them, because the company had no power to give them to me——

1409 Q. Why?

A. Simply because every dollar of bonds was outstanding already with Drexel, Morgan & Co.

Q. And actually in their possession?

A. And all the stock was there except what might be issued fraudulently, and there never were any income bonds, and never any resolutions with regard to any. Drexel, Morgan & Co. became alarmed in the spring of 1884 at the suits which the Cleveland Rolling Mill Company and others brought here, and of which, of course, their agent notified them, and they began to press me for payment of the loan that they had very kindly held for me for six or eight months after its maturity as a personal favor, and they saw, I presume, as moneyed men will do, that I was in a strait, and that probably they would have to resort to a sale of the security in order to clear the matter up. They then inquired of me whether any more stock or any more bonds had ever been issued so as to authorize them under their contract with me to demand it; I then informed them of this resolve I think, February, I think, isn't it, 1884?

Q. February 18, 1884.

A. Yes; very frankly, and I had the secretary send them a certified copy of the resolutions of that date. They then demanded of me under their contract and under this paper (referring to Complainant's Exhibit 1) that those 200,000 of bonds should be turned over to them upon the ground that if they sold out the stocks which they had they insisted that they should be the only stock that could
be issued and substantially control and be the railroad, and
1410 then I had the directors meet again—I don't know what date,
you will find it there, I remember the transaction very definitely—in consequence of the demands of Drexel, Morgan & Co., and passed resolutions with regard to the exchange of the old stock of the Indiana & Chicago Railroad Company and the Block Coal stock into new stock; that is in August, I think, isn't it, Mr. Gardner—July or August, 1884?

Mr. Gardner: It is May 5, 1884.

A. That meeting was held, I remember very distinctly, and those resolutions were passed, so that I could comply with my contract with Drexel, Morgan & Co., and as if they were compelled to sell out the original one million of bonds, and the Block Coal stock and the Indiana & Chicago stock that there would not be anything on the records that would authorize the issue of additional bonds or additional stock, and they compelled me, in order to adjourn the sale which was then pending, to sell out all the collaterals; they compelled me to sign an order on Mr. New to certify $200,000 more of bonds, and then I had Mr. Lacey, as secretary, make out the stock certificates, amounting to one million two hundred thousand dollars, and I personally delivered them to Drexel, Morgan & Co. in their banking house in New York city; and then, on August 12 and August 13, 1884, they sent back to Mr. Lacey, first the Indiana & Chicago Railway stock which they had, and in another letter the Chicago & Block Coal Railway Company stock, under
enclosure of the two original letters, which I now pro-
1411 duce and file.

Solicitor for complainant offered in evidence the letters produced by the witness, which are marked, respectively, Exhibits 4 and 5 and attached hereto.

A. That transaction, you will see, amounted to this: it amounted to an exchange to the amount of $460,000 [and] odd dollars of the old stock for the new consolidated stock, and the balance of the stock was issued in pursuance of the resolutions of February, 1884, and delivered to them, simply to clean up the record so that their contract, which gave them the right to hold as collateral every dollar of stock and every dollar of bonds, should be complied with.

Mr. BUTLER: That made a complete compliance with the contract?

A. Yes; and, of course, it was immaterial to them, if it had not been for these resolves of February, whether there was a million of bonds outstanding, as they could protect themselves against the further issue by this agreement, or whether there was a million two hundred thousand outstanding, or whether there was one million two hundred thousand of stock outstanding, or whether there was the lesser amount, so they had it all.

Mr. PIERCE: Do you remember when those bonds and stock were advertised for sale by Drexel, Morgan & Co.?

A. I have a very distinct recollection of it. I received in the course of mail from Drexel, Morgan & Co. a letter, the original of which I produce, under date of May 9, 1884, which speaks for itself.

1412 Solicitor for complainant offered in evidence the letter produced by the witness, which is hereto attached, marked "Complainant's Exhibit 6."

Q. Did you see it advertised?

A. Yes, sir. In order to evidence the loans which Drexel, Morgan & Co. made me I have executed the following five notes, which I now produce.

Mr. BUTLER: Do those notes cover the three hundred & fifty thousand dollars mentioned in this letter?

A. They do.

Q. The five aggregating three hundred & fifty thousand dollars?

A. Yes, sir.

Solicitor for complainant offered in evidence the five notes offered by the witnesses, which are hereto attached, marked "Complainant's Exhibit 7."

Mr. PIERCE: Where did you see these bonds and stock advertised—in what paper—do you remember?

A. They showed me in New York, when I went to see them after the receipt of the letter of May 9th, the advertisement in the banking house of Drexel, Morgan & Co. in New York.

Q. After the receipt of this letter of May 9, 1884, you may state what you did in connection with that matter.

A. I went to New York and begged for time. I had been straining every nerve for six months to bring about a sale of a part of the securities or a loan on them in order to relieve the debt of Drexel, Morgan & Co. and pay up all the outstanding debts of the
1413 concern, and at that time this letter was received. I had
what, it seemed to me, a very hopeful negotiation on foot for the sale of a certain amount of securities, and I represented that matter to Drexel, Morgan & Co., and they agreed to adjourn the sale, as will appear by the original contract, which I now produce, under date of the 27th of May, 1884. That contract was written in the banking house of Drexel, Morgan & Co., and signed by me and signed by a member of the firm there.

Solicitor for complainant offered in evidence the document produced by the witness, which is hereto attached, marked "Exhibit 8."

Q. Under that contract the sale was adjourned until the 20th of June, 1884?

A. Yes, sir.

Q. State what further you did.

A. Well, the 20th of June came around pretty speedily; I was in New York at that time—all the time—negotiating with some people from Chicago, some from Hartford, and some from Boston, from whom I was expecting to make a loan of six hundred thousand dollars on the bonds; I had a written contract with them, and they had either a certain time, I think the 1st of August, before they were compelled to elect to take the loan or not, and I wanted still further time than the 20th.

Q. The 20th of June?

A. The 20th of June; Drexel, Morgan & Co. peremptorily declined to give me another day unless I would procure some responsible parties that would buy the bonds at the sale on the day to which they would agree to adjourn it.

1414 Q. What did you do?

A. I came to Chicago and saw Mr. Gage.

Q. Of the First National Bank?

A. Yes, sir; the bank had a second pledge of all those bonds and stocks for indebtedness I owed the bank; I have made every inquiry and every search for either the original or a copy of that pledge, but I am unable to find it, and my strong impression is that when I executed the assignment to the bank on the 26th day of December, 1884, all of the antecedent papers were destroyed; Mr. Gage told me that he would see Mr. Porter and try and see whether he could get him to personally agree to buy the bonds at the sale to which it was to be adjourned; that was some time very soon after the May contract; it was between that and the 20th of June; Mr. Nickerson at that time, or at the time I first had the talk with Mr. Gage, was out of the country, but was expected home early in June; I met Mr. Nickerson in New York; he arrived pretty early in June, I think; the result of the arrangement was, so far as I know anything about it—because, as I remember it, the negotiation between Mr. Porter and Mr. Nickerson and Drexel, Morgan & Co. were conducted not through me nor in my presence—Drexel, Morgan & Co. said just before the 20th of June that they would adjourn the sale until the 20th of August, I think was the date, on condition that Mr. Porter and Mr. Nickerson would execute a written contract to buy the bonds on that day, unless I should sooner complete my negotiation and take up the loan of Drexel, Morgan & Co; on 1415 the 25th day of June, 1884, I executed with Drexel, Morgan & Co. contracts in duplicate covering the second adjournment, and my copy of that contract I now produce, which is signed by the genuine signature of Drexel, Morgan & Co.

Solicitor for complainant offered in evidence the document produced by the witness, which is hereto attached and marked "Complainant's Exhibit 9."

A. I desire also to state in that connection that the contract which existed on that date between Drexel, Morgan & Co. and Mr. Porter and Mr. Nickerson, as I understood, I neither saw then nor since, nor have I ever read it to this moment.

Q. You may state what success, if any, you had in negotiating or selling any part of these bonds pending that second adjournment of the sale by Drexel, Morgan & Co.

A. I had none. The parties with whom I was negotiating came West and went over the road, and they subsequently, in consequence of the then existing very bad times in railroad matters, declined to make the loan, and I was unable, although I tried, after that to make any headway in making any negotiations whatever in other places which I tried.

Q. I will ask you if you ever made any effort to sell the securities?

A. I was doing nothing else from early in 1884 down to the very last, except making the efforts to dipose of the securities at some price absolutely, or else to get a loan on them, and I could do neither one thing nor the other.

Q. I will ask you if you had any offers for the purchase of
1416 the bonds?

A. Never one.

Q. I will ask you if, at any time during the period you have mentioned, you were able to sell those bonds at 75 cents on the dollar?

A. No, sir; nor fifty, nor any price.

Q. They were unsalable, were they?

A. They were unsalable. You see the property was situated in just this wise up to the time the connection was made: There was a piece of road isolated, extending from Attica southward to Yeddo, and then there was another piece in process of construction, extending from Fair Oaks, the junction with the New Albany road, down southwardly; and until it was actually connected physically at Attica, why neither of the pieces of property were of any present value, and it made it not only an extremely difficult thing, but it was absolutely impossible until the physical connection was made, so that there would be a continuous road subject to the bonds to sell; so I made no attempt to negotiate the securities, because I knew it would be utterly useless, and it was not only that, but it was utterly useless for me to try to make a loan upon them. I had tried and tried and tried in 1882 to make a loan upon the bonds, and the only reason why Drexel, Morgan & Co. made this loan to me was on purely personal considerations; they were under very considerable obligations to me, and they requited me in this way; as a business transaction they would not have done it for a minute.

Q. What was the date of the connection at Attica?

1417 A. I do not carry the date exactly in my head, but I should say it was along toward February, 1884.

Mr. **Gardner**: How long prior to the date of your letter just offered in evidence?

A. I think it was just about that time, according to my best recollection.

Q. February 18, 1884?

A. Because I was desirous to have the thing put in shape, so as to assist me in making either a sale of the bonds or a loan upon them just as soon as the track was connected there, so that the persons who were to offer the bonds could state that it was on nearly 80 miles of completed road.

Mr. **Pierce**: After the connection was made how did you find a market then for the sale of the bonds?

A. As I have stated, I was unable to make any headway whatever, either in selling or making a loan. I tried both plans and tried it in every quarter.

Q. You offered them for sale?

A. Yes, sir.

Q. At any price?

A. I did not offer them at any price.

Q. What I mean is, did you fix any price you offered to sell them at?

A. There were various prices fixed and suggested, but we never got far enough along, as far as the sale of the bonds was *connected*, Mr. Pierce, so that it got to a question of price at all.

Q. As to what they would pay for them?

A. That plan was entirely abandoned, our making a sale of the
bonds, and the next plan was taken up, which was to under-
1418 take to make a loan on the bonds to pay off the Drexel, Mor-
gan & Co. debt and pay off all the company's debts, so that
some new person should be the only one creditor of the concern
outside of the expectancy that I had in for the large amount of
money I had put into it.

Q. Mr. Crawford, I will ask you right there to state what information was given out along the line of the road to contractors, creditors, and others in regard to the pledge of these bonds to Drexel, Morgan & Co. and receiving from them the money that was being expended on the construction of the road.

A. I was down along the line of the road very seldom; I rarely went down except about the time that money was being paid out on the road, towards the middle of months; as far as I ever saw or had any conversation with the creditors, they knew about the matter exactly as much as I knew. Towards the last of 1882 there began to be arrearages on labor and material accounts. I had not any collateral out of that Chicago & Great Southern matter to get any money on, and all the money that I put in—why, I was putting in out of my own pocket-book; and, if you gentlemen remember, the last part of 1882, and all that period, it was probably as black times for new railroad enterprises as this country has ever seen or ever will see, and debts began to accumulate, and I told Mr. Chisholm personally——

Q. Who is Mr. Chisholm?

A. He is the president of the Cleveland Rolling Mill Com-
1419 pany. I told Mr. Irwin personally; I told Mr. Christie, of
Mueller & Christie; I told Mr. McDonald, the man who was
driving piles down there; I told McCalmont, and half a dozen other
creditors that I personally remember, that I was personally negoti-
ating with Drexel, Morgan & Co. to loan $400,000 on the pledge of
the stocks and bonds of the company to clear up the past-due debts
and to go on with the work.

Q. How about the Smith Bridge Company?

A. And the Smith Bridge Company. Right in that connection, I desire to state that while I was making this negotiation with Drexel, Morgan & Co., which probably occupied in all over a month, I saw Mr. William Chisholm, the president of the Cleveland Rolling Mill Company, in Drexel Morgan & Co.'s office, in New York, and I told him just exactly what my business there was; and the full and precise nature of it. Later, he got at my earnest solicitation twenty-two thousand odd hundred dollars out of this very Drexel, Morgan & Co. loan in a check drawn by me on that house.

Q. In payment of what?

A. In payment of part of his rail account that had been incurred
in the fall of 1881; I told the Smith Bridge Company, whose gen-
eral manager was also in New York at that time dunning me vig-
orously for a payment that I would have liked to have paid him,
and he personally knew of the negotiation with Drexel, Morgan &
Co., and that they were loaning upon the bonds, and just exactly
what was going to be done with the money; one of the very first
men that was paid out of the Drexel, Morgan & Co. money
1420 was the firm of Mueller & Christie, for ties furnished and
shipped down to Fair Oaks in the latter part of 1882.

Q. Do you remember how much they were paid?

A. They were paid out of the Drexel, Morgan & Co. money, my impression is, off hand, eleven thousand and some hundred dollars. I will see by refreshing my recollection. (Witness refers to paper.) $11,090.56. That was all of it, for ties that had been shipped down in 1882, and was owed for, and he had dunned me for it, and I had explained to him the situation—that I had no bonds and no stocks of the Great Southern company; that they were all pledged to Mr. Dull, but that I was making a negotiation with Drexel, Morgan & Co. by which it would relieve that payment and make a fund enough to pay up all of the debts, and complete, as I thought, the work to Attica, and not leave a single dollar of the construction debts. Mr. Christie knew that just thoroughly in every part as I do to-day, and he received a check for that amount of money almost as soon as I got that from New York.

Q. On whom?

A. On Drexel, Morgan & Co., countersigned by Roswell Miller, their agent. Mr. Irwin knew the same thing, and so did Mr. McCalmont, because I had been dunned by them for past-due grading account, and the situation was explained exactly and precisely and truthfully to them, and as soon as the first money came, why they got their acquittance in the same way.

Q. Do you remember, as a matter of fact, that Irwin and
1421 McCalmont were paid out of this Drexel, Morgan & Co.
fund?

A. Why, certainly; several times they were.

Q. I will ask you to state, Mr. Crawford, what concealment you ever made to anybody in regard to the status of the stock and bonds of the Chicago & Great Southern Railway Company?

A. Never anybody on earth; every creditor of that concern I told the situation frankly to—that is, that the bonds and stock were never, after I began to take any active management of the concern, not a dollar of stock or a dollar of bonds was ever under my control or in my possession, not a dollar.

Q. Mr. Crawford, you were elected a director of the railway company at a meeting on the 15th day of March, 1882, were you not?

A. I was.

Q. I will ask you when your construction contract was made with the railway company?

A. Three days after that.

Q. And at the meeting of the railroad company where?

A. In Chicago, on the 18th day of March, 1882.

Q. What was the condition of the railroad at the time you made that construction contract in regard to the progress made in the work?

A. The road was completed between Oxford and Goodland. I mean by completed, the track all laid. The grading was completed, I think, almost entirely, if not entirely, between Goodland and Fair Oaks; a very little work had been done by Mr. Irwin south of Oxford, a very little work. My impression is, until about a day or two
probably before the 15th of March, 1882, I never had been on
1422 the property or seen it. I do not now recall that between the
time when I purchased the stock of Foster and the time that
I was at Goodland—I do not recall that I was ever down there or saw any part of this work, and I don't think I was; I was a very busy man in other matters of more importance at that time.

Q. Mr. Crawford, I will ask you to state at the time you made that construction contract who was the owner of the stock of that railroad.

A. Well, I presume that involves probably a question of law as well as fact. I can state that I was the owner of $60,250 of stock. I think, and thought then, that I owned every share of stock on earth that that corporation had outstanding, and was its sole and absolute proprietor, as much as I am of the clothes I am in.

Q. Had you any knowledge at that time of the voting donations or the aid to the railroad company by those two counties down there?

A. I knew from information which Mr. Foster had given me that two townships in Newton county and two townships in Benton county had voted aid, but I had understood from him and from others that it either was or was to be an absolute donation, and if you will refer to my contract with Mr. Foster you will see that plainly stated in it: "And the said party of the first part further guarantees"——

Q. That is, Foster?

A. Yes, sir. "That the said Indiana & Chicago Railway Company is under no binding obligations to issue any stock, except as aforesaid, except in connection with and as payment for the procuring of certain rights of way." They also presented to me 1423 when I bought the stock an original certificate of the secretary of the company under the corporate seal, showing the entire amount of outstanding stock. I desire to state, in that connection, that Mr. Foster is entirely in error in stating that I was in Fowler and at Kentland just before the 15th of March, 1882, when he drew the money from those counties. I never was in Fowler in my life until 1883 or 1884, late, and I was not at Kentland when he drew that money.

Solicitor for complainant offered in evidence the paper produced by the witness, which is hereto attached, marked Complainant's "Exhibit 10."

Q. When did you learn, Mr. Crawford, for the first time that those tax-payers would probably be entitled to stock, or that instead of its being a donation that there might be a stock liability there to the tax-payers?

A. I never learned it until away along, my impression is, late in 1882.

Q. How did you learn it then?

A. I don't know exactly how I did learn it; I know it was considerable of a surprise to me when I did learn it.

Q. You don't know how it did come about?

A. No; I do not.

Q. You believed you were the owner of all the stock?

A. I did. When I made the change in the board of directors of that company on the 15th day of March, 1882, I did it supposing I owned every share of stock that was issued, or could be issued, in that company except for rights of way, and, as Mr. Anna- 1424 bal has already testified, I gave him instructions to pay the money for that and not to issue the stock. I think he has already testified to that.

Q. When were those notes surrendered to you, Mr. Crawford?

(Referring to notes already introduced in evidence.)

A. They were surrendered to me in January, 1885.

Q. From whom did you receive them?

A. I got them from Henry H. Porter.

Q. Where—here in Chicago?

A. Yes, sir.

Q. I will ask you if you were acquainted with the old board of directors of the Indiana and Chicago Railway Company, who were in office previous to the 15th of March, 1882?

A. Some I knew and some I never had seen or heard of. My impression is that of the directors of the Indiana and Chicago railway

I had known Mr. William Foster ever since I was a young man, and his family. Mr. Little, I think he was a director——

Q. Yes.

A. I have known him as a young boy at Brookston, Indiana, where I once resided. I don't think that I had ever seen any of the others.

Q. Did you know Mr. George Hardy?

A. I never saw Mr. Hardy in my life until the day that he came up and introduced himself to me, in June, 1881, and wanted me to buy the road. I never saw him afterwards until the 15th of March, I think.

Q. Did you know Mr. Spoor?

A. No, sir; I never had seen him in my life.

1425 Q. Did you know Mr. Snow?

A. I never saw him in my life until the evening of March, 1882.

Q. Did you know Mr. Forseman?

A. No, sir; I never saw him until long after that.

Q. When did you see Mr. Spoor first; have you ever seen him?

A. My impression is that I saw Mr. Spoor when I was down at Goodland, on the 14th of March; I don't think I had ever seen him before.

Q. Who was Mr. J. H. McConnell; did you know him?

A. No, sir; I never had seen him before, and I don't know that I have ever seen him.

Q. Mr. Little was secretary of the company, wasn't he?

A. I think he was; I think his name is to the certificate that was originally shown me. (Referring to "Complainant's Exhibit 10.")

Q. The same Mr. Little who testified as a witness a few days ago?

A. Yes, sir.

Q. Do you know Silas Sink?

A. No, sir; I never saw him in my life that I am aware of.

Q. R. G. Odle, of Warren county?

A. Nor him either.

Q. I will ask you what business relations, if any, you had with the board of directors previous to the 15th of March, 1882?

A. None whatever.

Q. I will ask you what control, if any, you had over their actions?

A. That is a question of mental operations, I presume; I don't know that I had any.

1426 Q. You had no contract with them?

A. No, sir; none whatever.

Q. I will ask you if you ever gave them any instructions at any time as to what they should do at the meetings of the board of directors?

A. Not in any such sense as that at all. Naturally, after I became by my contract with Mr. Foster the purchaser of practically all of the stock of the road, why Mr. Foster consulted me more or less as to what should be done and how to do it, and I on all such occasions as that made suggestions; very frequently they were adopted; and sometimes they were not adopted; sometimes I would concede to their view. I don't think I ever met any of the board of directors, or ever had anything to do with them or what they did, except as it was done probably by consultations when Mr. Foster would come up here to see me.

Q. I will ask you to state, Mr. Crawford, how you came to enter into this construction contract with the railway company?

A. Well, I don't know as I can state in any coherent way exactly how I came to do it; I presumed at the time that construction contract was made that I was practically a corporation sole[ly]; that I owned every share of stock that had been issued by the concern, and although I never regarded the stock as of any special value I was in a still different position from that, and that was that I had invested a very large sum of money, and that the only way that you could get out of a corporation in any form—the stock or bonds of a corporation—the usual method is through the agency of a 1427 construction contract, and it was done rather more as a formality than anything else.

Q. I will ask you if you are familiar with the record-book that has been offered in evidence, and which I now have before me—the regular record-book of the company?

A. Well, yes; I guess I am familiar with it.

Q. You have had occasion to read it, at various times, have you, and to look it over?

A. I have not even read it very thoroughly that I know of, in that sense; some parts of it I don't think I have ever read at all.

Q. I see there are some parts of it in your handwriting.

A. Yes, sir; a good many.

Q. That is the record of the meetings held from time to time?

A. Yes, sir.

Q. I will ask you if in your examination of the record-book, if there are any statements contained in this record-book anywhere that are incorrect or false?

A. Not to my knowledge. I want to state just exactly what I had to do with the record-book there.

Q. I wish you would.

A. My son was for quite a while secretary; later Mr. Lacey was secretary, and neither of those young men had ever had any experience whatever in making up corporate records, and from time to time, as meetings were held, they were directed by me to reduce to a kind of memorandum form the heads of matters that occurred at the meeting, and who were present, and then they were 1428 handed to me and I reduced them to form in a great many instances. In some instances I wrote them out from the memorandum and handed them to Mr. Lacey, and then he copied them into the book.

Q. You write a free-and-easy hand, don't you?

A. Thank you, sir; I don't know whether I do or not.

Q. I mean to say you write easily to yourself; you are a rapid writer.

A. I don't put anything into that book on account of the writing.

Q. The point I am getting at is this, there are some of these records here that are in your handwriting; you say you were requested at various times by the secretary to make minutes sometimes, and furnish a form.

A. I didn't do it at their request, specially, at all. I wanted to do it myself to see that they were formally correct.

Q. So that at times you wrote the records yourself?

A. I did very frequently, I think.

Q. I will ask you if it was not about as easy for you to write the record as it would have been to sit down and make a memorandum outline of it, and then have somebody else copy it?

A. It involved so much writing, of course. It was immaterial to me whether I did it in that way or the other.

Q. What I meant by my question, which you wrongly interpreted as a compliment to your writing, was that it was about as easy for you to write the record as it was for you to write the memorandum for somebody else to copy into the records.

A. Oh, yes.

1429 Q. I will ask you if in any instance where you wrote the record you did it from memoranda furnished by the proper officers of the company?

A. Certainly I did; I could not imagine a more motiveless crime than for me to forge a thing that was an utter formality about a meeting that was just as easy to hold as it certainly was to manufacture.

Q. There has been something said about a meeting held in Chicago February 18th, 1884, and about a certain letter of yours that was presented to that meeting and on which some action was taken. I find the original letter is attached to the record here The date of that letter is February 18, 1884. You are familiar, I suppose, with the contents of that letter?

A. I am.

Q. I will ask you if that letter contains a correct statement of the situation, the things therein described, as you understood it at that time?

A. Yes, I think it does; and as it was at that time. It was absolutely true in every particular. In that same connection you speak about a letter. Mr. George McDonald has testified to another letter at that time, which he termed a letter of instructions. Mr. McDonald is wholly in error in his recollection in that respect; there never was any such letter of instructions in existence as that about which he testifies.

1430 Q. Mr. Crawford, I want to ask you one question in regard to this contract, and that is, what was the character of the rails you laid in the track of that road after your contract with the company?

A. The road is laid with rails in this way—I might as well state this, because it has been inquired about several times, and I will do that as a preface to an answer to your question. The Block Coal road, twenty-one miles long, was laid with iron rails originally; the line from Oxford to Goodland was laid in 1881 with iron rails;

the track from Goodland to Fair Oaks and from Oxford to Attica all of which was laid after the 18th of March, 1882, is laid exclusively with steel rails.

Q. In other words, you put nothing but steel rails into the road after——

A. After that date.

Q. After the 15th of March, 1882?

A. Not a bar.

Q. I want to ask you generally how the work was done on the road between Fair Oaks and Attica?

A. It was done in every respect except one—and that was a temporary measure—as [a] first-class road, with nothing slouched about it, either as to ties, or grades, or bridges, or station-houses, or tanks, or switches. There was across some of the bad and formidable gullies towards Attica some temporary work put across so that the trestle would be filled in by what is called train-work, simply for the reason that there was not any accessible earth there to make the grade originally with, and it would require by estimates which I had made by my engineer, and which are confirmed by what Mr. Kimball has recently reported to the court—so he informed me—
1431 it would require about $12,000 of expense to completely fill those temporary trestles and make it a solid embankment. That being done, all of the new work which was done there was thoroughly first-class work in every respect.

Q. Then, in other words, putting your own money into the construction of that railroad, and expecting eventually to own it yourself, you tried to build and did build as much as possible in first-class shape.

A. You are stating an impression of mine there that did not exist along towards the latter part of that construction—that I expected to own it myself. It was rather a question whether I was going to save anything out of it for myself than own it.

Q. You did the work in first-class style?

A. The work was done well.

Q. The work was done in first-class style?

A. Yes, sir; I do not mean by that a Pennsylvania railroad, but I mean, as far as my knowledge of railroading goes, that it was as good a new road as had ever been built in the State of Indiana.

Mr. **Butler**: What did you cut the grade to?

A. The prevailing grade on the part of the work that was done by me was 42 feet to the mile out of the Wabash, and it required, I presume, an expense of not less than $10,000 in surveys to get that. We had to keep a corps there in the field, and I presume they made twenty different surveys. It is almost impossible to get out
1432 of the Wabash river with a satisfactory grade. It is 42 feet to the mile, I think. That part of the work from Oxford down to Attica is the only part of the work that was made under a survey made subsequently to my having anything to do with the property. The balance was done on the old survey.

Mr. **Pierce**: So that for every dollar expended on that road you think you have got its equivalent?

Solicitor for defendants objects to the question because the witness has not said that.

A. I would not state that, because I think probably that was not true in some instances. I think, for instance, with regard to the Wabash bridge, that both the engineer that was in charge of the line and the contractor were both at fault in not putting some of the piers on pile foundations; and, therefore, I do not think that a dollar of expenditure in that case meant a dollar of value. But for all the same it cost a dollar, and cost a good deal more than a dollar, because the result of their inattention was that a couple of the piers got knocked overboard, and it cost a good deal of money and made a great deal of delay in completing the whole work.

Q. I will ask you then to state, Mr. Crawford, what, if anything, you lacked of a complete compliance with your contract for the construction of the road, so far as your construction went, if anything?

A. Well, I would prefer not to answer the question in that way,
because it would be a question of opinion, and the amount
1433 of the contract price there was stated at so much per mile,
and it is an easy matter of arithmetic to get at that result. I
don't know of any particular, as far as detail was concerned, that the
contract was not complied with.

Q. Mr. Crawford, I will ask you to state the amount of your indebtedness to the First National Bank, for which you gave a second lien on those securities.

A. Well, in December, 1884, it amounted to, my impression is, $293,000.

Q. In December, 1884?

A. In round numbers; yes.

Q. What was that indebtedness incurred for?

A. Well, it was partly for the construction of the Chicago & Indianapolis Air Line road.

Q. For what part of it, should you say?

A. Well, I should say two-thirds of it, and partly for money that went into the Chicago & Great Southern.

Q. I will ask you, along about that time, Mr. Crawford, if you were paying out money in the construction of the Chicago and Great Southern out of your own private funds?

A. I was pretty much doing that all the time; what time do you mean?

Q. During the period of this indebtedness to the First National Bank And I will ask you if this indebtedness to the First National Bank was not allowed to run along by you because you were using money which might have gone to the extinguishment of that debt in the construction of the Chicago & Great Southern railway?

A. Of course the money that I had that I put into the Chi-
1434 cago & Great Southern railway; if I had not done it [it] might
have gone to the clearing up of my indebtedness elsewhere,
of course. It did not go that way, though.

Q. I will ask you if you had any contract of any sort with Porter and Nickerson when they bought the bonds from Drexel, Morgan & Co. that you should retain any interest in them?

A. Not the slightest. I never knew, as I have stated here before, explicitly—I never knew what the contract was between Drexel, Morgan & Co. and Porter and Mr. Nickerson. I never had seen it or read it. I knew from what Drexel, Morgan & Co. told me, and from what Mr. Nickerson and Mr. Porter had told me, that they had bound themselves to buy those securities on the 20th day of August, if before that time I had not succeeded in cancelling that indebtedness there.

Q. And, as a matter of fact, you did not cancel that indebtedness?

A. I was unable to do it and did not.

Q. Nor any part of it?

A. Nor any part of it.

Q. I want to ask you, Mr. Crawford, about this contract that was made in December, known as the syndicate, what has been called here the syndicate contract. I will ask you how you came to make that contract?

A. I don't know that I understand your question.

Q. The First National Bank had had a second lien on these securities?

A. I have always stated it had.

Q. I will ask you what securities they held at the time that syndicate contract was made to secure your indebtedness to
1435 the bank?

A. They had 4,700 shares of Louisville, New Albany, and Chicago Railway Company stock, that were at that time worth about eleven and a half or twelve cents on the dollar; also thirty-seven shares of the Gulf, Colorado and Santa Fé Railroad Company, $11,000 of the mortgage notes, signed by I. N. Herrick, and $27,000, I think, of bonds belonging to P. B. Shumway, the bonds being of the Wabash, Pacific, and St. Louis Railway Company, Chicago division. The bonds did not belong to me, as I have stated. The mortgage notes were sold for $8,000, I think. It was a question as to the worth of the property. The individual who signed the notes was a man of straw and worthless. The Gulf, Colorado and Santa Fé stock was worth and sold for fifty cents on the dollar.

Q. That was all the securities they held then to secure them on the notes they held against you?

A. It was.

Q. Except the second lien?

A. You said securities they held, and I meant by that that they had in hand. The others they had, the second pledge of the securities, were held by somebody else.

Q. The securities were held by Drexel, Morgan & Co.?

A. Yes, sir.

Q. Do you remember the execution of the contract, known as the syndicate contract, in December, Mr. Crawford?

A. Yes, sir.

Q. I will ask you to state to the commissioner how that contract came to be made?

1436 A. Mr. Nickerson advised me some time before that time—I don't recall just exactly the date—that he and Mr. Porter had come to an understanding as to the manner in which the second lien of the bank should be protected. I was not consulted very much about the matter. I was in such a situation that I had to do substantially what was required of me. Mr. Spooner was brought down, as I understand, from Wisconsin, and he drew up the original draft of this paper, and it was executed substantially as he drew it. I had very little to do except as a passive instrument of fate.

Q. That original instrument, together with its endorsements, has been introduced in evidence here. I will ask you if the contract and assignment of your interest in that contract, and the endorsement of Mr. Porter of his notice of your assignment to the bank of your interest, were all concurrent acts—were all done at the same time?

A. Yes, sir; they were all done at the same time. I think the papers were all signed at one sitting, right there in Mr. Nickerson's room in the bank.

Q. I will ask you what interest you have got in the syndicate contract?

A. Not a cent.

Q. Except so far as they——

A. You asked me what interest. I mean, as a practical man, to state that I don't presume I have got a cent. Nominally there is a legal fiction in there I might be said to have some interest in.

Q. That is in so far as whatever the First National Bank realizes
out of that contract goes to the extinguishment of your
1437 debt to them?

A. Yes; and if there should by any strange mischance be a surplus of a few dollars over and above their debt, why, I would be entitled to that, but it would not amount to a tithe of the value of the fresh property that I was compelled to put into the concern in that deal.

Q. So that your executing that contract was for the purpose of releasing the securities that the bank already held against you?

A. The purpose of my executing that contract was exactly this: I owed that bank $300,000, practically, and I was in just this fix: Mr. Porter had bought out those securities at the Drexel, Morgan & Co. sale, and except for some adjustment that should be made between the bank and Mr. Porter, satisfactory to the bank, I was in a condition to be ruined by the debt of $300,000, with practically no security against it. And as I understood then, and always understood, that the purchase by Mr. Porter of the securities at Drexel, Morgan & Co.'s was under an arrangement or an understanding, indefinite in its character, between him and Mr. Nickerson that although he should purchase the securities out and out from Drexel, Morgan & Co., that he would after that purchase make some adjustment of the bank debt that should be dependent upon future negotiations and investigation, and unless I came into that arrangement why I was there with a debt of $300,000 against me, and no security, so that I was not in a particular condition to make any argument or drive any terms with anybody.

1438 By agreement a recess was then taken until 2.30 o'clock p. m.

Parties reassembled at 2.30 o'clock p. m., when the direct examination of Henry Crawford was resumed by Mr. PIERCE, as follows:

Q. Mr. Crawford, in this petition filed by Swan and Atkinson in this case, sworn to by Cephas Atkinson, I find this allegation: "All the persons named"—referring to the directors who were elected at that meeting of the board of directors on the 15th day of March, 1882—" were his friends, kindred, employees, and servants, and constituted a ruling majority in all the meetings of said board. They were all"—I want to call your attention now particularly to what I read from this on—"they were all subject to his personal control and domination, and were elected and qualified under promise and agreement to carry out the wishes of the said Henry Crawford in and about the premises." I will ask you to state whether that allegation is correct, Mr. Crawford?

A. It is not.

Q. State what promise or agreement, if any, was ever made to any of those parties.

A. Not the slightest. I had them designated as directors. I am no doubt responsible for that, and at that date, at Goodland, I transferred to each one of them a share of stock, as per the paper which I now produce. That is the original of the transfer under date,
1439 I think, March 15, 1884.

Q. That is the transfer, is it?

A. That is the original paper.

Solicitor for complainant offers in evidence the paper produced by the witness, which is attached hereto, marked "Complainant's Exhibit No. 11."

Solicitor for defendants objected to the document, because it contains no proper assignment of stock under the laws of the State of Indiana.

Q. In the same document I find this allegation—that is, in this petition of Swan and Atkinson: "After said Crawford had procured said bonds and stock he delivered them to Drexel, Morgan & Co., bankers, of New York, by way of pledge for an individual loan of money made by them for about the sum of $350,000." What do you say to that allegation, Mr. Crawford?

Solicitor for defendants objected to the question, and objected to the course of counsel in reading from papers and pleadings in this case to get the opinion of the witness or the testimony of the witness about their truth or falsity as irregular and incompetent.

A. The statement is false in two particulars. In the first place, as the statement is in the petition there, taken in connection
1440 with the prior averment that I obtained the bonds and stock after February, 1884, and then hypothecated them to Drexel, Morgan & Co. for an individual loan of money. The bonds were hypothecated to Drexel, Morgan & Co., as I have stated, in January,

1883; and instead of its being an individual loan of money, if by that is meant a loan to me, for my individual use, that every dollar of the money went into the property.

Q. When did you hear or receive the first intimation that there was anything wrong with the issue of those bonds, or anything touching their validity and legality?

Objected to by solicitor for defendants.

A. It was in February, 1885.

Q. Where, under what circumstances, and from whom?

Objected to by solicitor for defendants.

A. Mr. F. F. Lacey, a month or so before, had presented to me, desiring that I should approve the same, an account which he had made out against the Chicago and Great Southern Railway Company for services. Accompanying the account were a large number of memoranda and papers. After an examination I informed him that the account was largely incorrect.

Q. It was his individual account, was it?

A. Yes; and that I should decline to approve it as being correct, pointing out to him a very large number of items. Not long afterwards he visited my office and insisted with some degree of heat that his account, as he had presented it, should be approved by me; and not only that, but that I should person-
1441 ally see Mr. Porter and see that that was paid. I told him I
would not approve his account as correct, and I should not ask Mr. Porter or anybody else to pay it in that condition. He remarked then in substance that his account ought to be treated as an exception, he thought. I asked him on what ground, and he said I knew he was cognizant of certain matters that would defeat the bonds and render my connection with the company fraudulent. I told him that if he or anybody else was possessed of that knowledge they had better make public any connection of that kind that I had with the transaction, and that from that time forward I certainly should decline all intercourse with him. I give about the substance of the conversation. Of course it was attended by some heat probably upon both sides naturally. That constitutes the first intimation that I ever had on earth that there was to be any assault whatever upon the validity of these bonds, or upon my connection with the Chicago & Great Southern railway.

Q. Embracing your construction contract?

A. My connection with the railway company.

Q. Mr. Crawford, I will ask you if you have ever gotten any money out of the Chicago & Great Southern railway?

A. Never, under any circumstances or at any time. My connection with the Chicago and Great Southern Railway Company has been the most disastrous experience of my life, and I have lost what would be a very handsome fortune in it.

1442 Q. How much money did you put into the railroad after your contract with Drexel, Morgan & Co., and upon what security did you put that money in?

A. All the money that I put in, of course, after January 1, 1883, I put in without absolutely any security whatever except the hope that I would be enabled to work the thing out. I can speak but in general terms of the amount of money that I put in after that time, without a dollar of security in my hands or any opportunity to get any from the corporation.

Q. And what would you say that was?

A. My impression is that I put in after that time, and up to the time the receiver was appointed, not less than $250,000 cash.

1443 Cross-examination by Col. Cooper:

Q. Mr. Crawford, the claim of the Cleveland Rolling Mill Company for the amount that it got judgment for, was that substantially correct?

A. I have no doubt, Colonel, that it was entirely correct, as far as my knowledge goes; of course quite an amount of that represents interest. The cause of action, as it finally went into judgment, consisted, as my memory serves me, in the purchase-price of a thousand tons of rails, at fifty-two dollars and a half, I think, of which amount $22,700 had been paid in 1883, and the amount for which the judgment was recovered represented the original price, with interest, subject to that payment, and I have no doubt is entirely correct; I never examined the account critically, but I think so.

Q. And that was for material that went into the construction of the road?

A. It was for iron rails purchased in the year 1881 that actually were laid on the road in that year or early in 1882, prior to March.

Q. Were all the purchases made prior to March, 1882?

A. Do you mean of the Cleveland Rolling Mill?

Q. Yes.

A. O, yes; I think they were; my impression is that these rails were all delivered in November, 1881, and laid on the track, and constitute a part of the iron rails which lie between Goodland and Oxford.

1444 Q. The claim that went into judgment in favor of Fitzsimmons & Connell, what was that for, do you remember?

A. The company bought bills of lumber at various times of Fitzsimmons & Connell; some of it was for work on the north end of the road; I mean by that, between Attica and Fair Oaks; my own impression is, that this particular bill of lumber was for the purpose of repairing the bridge over the Big Shawnee, south of Attica, on the Block Coal road. That part of the road had been built for quite a long while before I bought it, and some of the wood-work needed repairs; I had to put a very large amount of repairs on that part of the line, after it had been bought; I am not able to state accurately, but that is my best impression—that this last bill was for that purpose.

Q. How was it about the claim of Mueller & Christie, which went into judgment?

A. Mueller & Christie's claim arose exclusively for ties that were shipped down over the road and laid into either new construction in the main track or sidings.

Q. And as you understand the amount of the judgment was obtained—that was substantially correct?

A. I don't know, Colonel, of a single judgment that was obtained against the company to my knowledge that was not for the accurate amount that was due. I have this general knowledge over the matter: they originally brought a suit, and I was begging for time, and I put my hand into my own pocketbook and paid Mueller & Christie the last thousand dollars which was got before they got judgment, simply to protect the concern against having judg-
1445 ments while I was making these negotiations, so as to clear its credit. I have no doubt but that that judgment is for a correct amount.

Q. Were the claims of Oliver Bros. & Phillips and H. B. Scutt & Co. for materials used in the construction of the road?

A. I have forgotten distinctly about the claim of Oliver Bros. & Phillips; I think it was. The claim of Scutt & Co. was for barbed wire used for fencing; that was bought by the company; it was not embraced within the terms of my construction contract; in other words, I was not obliged to furnish any fencing; but, as I remember the transaction, Mr. Worden, who was the agent of the company at Goodland, made an order from the agent of Scutt & Co. for that barbed wire, and it was shipped out and was put in fencing along the line of the railroad, and is there to-day.

Q. The Marsh & Bingham Company; what was that material for?

A. My impression of the Marsh Bros. & Ransome, I think the name is, or Marsh, Bingham & Ransome—the firm changed a little—it is the same as to that bill as to the other; it is simply rather a strong impression of mine that both those items of timber were for repair on the Big Shawnee bridge; we had bought at odd times for two or three years bills of lumber from them that had been paid for. I may be in error about that, but that is simply an impression; understand me, all of it went into the road either for original construction or for repairs.

Q. At how early a time did you acquire the Block Coal road
1446 property, or rather the stock, which I understand you represented that property; at how early a period?

A. My impression is that it was about a month before I bought the Foster stock.

Q. That company, as I gather rather from a suggestion in your direct testimony than otherwise—that property had been foreclosed under a mortgage?

A. Under a first mortgage.

Q. And had been bought in?

A. Yes, sir; it had been bought in by A. J. Dull. A master in chancery, Fishback, had made a deed to A. J. Dull; then he had organized a company under the laws of Indiana of 1885, and that company was named the Chicago & Block Coal Railroad Company; it had no bonds and it had no debts, and it simply held this stock.

Q. And the stock represented the property?

A. The absolute property free of liens and clear.

Q. That purchase you made in your own name?

A. Yes, sir.

Q. From Mr. Dull?

A. Yes, sir.

Q. You gave your note for it, as I understand?

A. I did; for $200,000.

Q. How much had been paid on that by the 5th of January, 1883, when Drexel, Morgan & Co. took the securities?

A. I had made one payment out of my own means of $35,000 and a second payment of $50,000; I didn't get credit for quite $50,000, because there was some little question of exchange, or something like that, so that the actual voucher sent up was $49,990 something, I think, but I actually spent $50,000 and $35,000, making $85,000. 1447

Q. And, as I understand, all the franchises and property and rights and interest of the Block Coal road were subsequently consolidated with the Chicago and Great Southern railway?

A. You are correct, and it was part of my contract with Drexel, Morgan & Co., as you will see by a reference to it.

Q. You spoke about the Chicago & Block Coal Railroad Company not being built between Attica and Yeddo, and also having acquired rights of way substantially to Brazil, and some construction done on that; am I correct on that statement?

Q. You are, sir; entirely. The old company, called the Indiana North & South Company, had acquired the right of way, beginning right in the heart of Brazil, and had graded the line once fully, for about 17 miles northward, right through the coal-field and nearly up to Rockville, the county seat of Park county; then they had rights of way practically all the way up to Yeddo.

Q. It was all that property that was consolidated with the Chicago & Great Southern?

A. It was—that is, whatever the Chicago & Block Coal Company owned, of course, went into the consolidation.

Q. As I understand from you, at the time that these two directors first visited you, your understanding was that they visited you because of their knowledge of your ownership of the Chicago & Block Coal Company, and your purpose to build that from there to bring the coal right into Chicago? 1448

A. You have not got it exactly right; at that time I was building the Air Line road, and the purpose was not to build the Coal road into Chicago, but was to make a connection with the Air Line road at the first available point; they had heard of that; I think it had got into the papers; the meeting was not of my seeking at all; they sought me.

Q. You learned from them that they did not have any control of the Indiana & Chicago Railway Company as it was then named?

A. I did.

Q. But that Mr. Foster had?

A. I do not care about unnecessarily giving private conversations, but substantially what they wanted me to do was to buy up some claims against Mr. Foster, so as to, as it were, squeeze him out of his stock, and I declined to do it; that is what it was.

Q. And then you met Mr. Foster?

A. I said I would not have any dealings with anybody in regard to that, except in an open manly way with Mr. Foster; they went home then, evidently, and reported the conversation, and Mr. Foster, without any suggestion on my part, visited me.

Q. And the result of that was the contract of June 23?

A. It was.

Q. Now, when you were dealing with Mr. Foster and made that contract with him, you understood, did you not, that a contract with
him meant practically what the contract says—the control o
1449 the road by you—that is to say, the control of the majority
of the stock?

A. I thought, Col. Cooper, when I made that contract I was buying everything in the way of stock issued or that could be issued, except the ten thousand dollars which I afterwards bought from him, taking out of view the question of the obligation to issue stock to a very small amount for a right of way that I intended to pay in money, so that you are entirely correct in stating that I presumed that I was buying the entire property just exactly as my contract recites, free of debt and free of any obligation ever to issue another dollar of stock except the ten thousand dollars of Mr. Foster's.

Q. There has been introduced in evidence a certificate which you presented this morning, made by the secretary of the Indiana & Chicago Railway Company, dated June 22, 1881, and marked "Complainant's Exhibit 10," in which *it* is stated the number of shares of stock subscribed since the organization of the company. Now, whilst Mr. Foster owned a great majority of those shares, as appears by this certificate, yet there are numbers of other people who owned a few shares. Now, did you or not have any agreement with the owners of those other shares that they would join in this matter with Mr. Foster and make a sale to you?

A. My answer to that, as will be seen, is based upon the recitals of the agreement of the 23rd of June, which is not only between Mr. Foster as alone, but Mr. Foster in behalf of himself and his associates; so that, although my dealing was with him alone,
1450 yet he purported to bind some unknown persons there that
they would transfer to me every dollar of the stock outside of the ten thousand dollars that Mr. Foster held. Let me read it, because it states it exactly as I understood it. I bought certain certificates of stock numbered from 3 to 17. Now, if you remember those certificates, they embrace not only certificates that were issued to Mr. Foster, but the little baby certificates that were issued to others, and, as a condition of the sale of this stock, the said party of the first part—that is, Foster—"hereby expressly covenants and agrees that the said certificates of stock and the shares hereby transferred comprise the entire amount of stock of said corporation that has been actually issued, with the exception of $10,000 thereof that has been issued to the party of the first part; and said party of the first part further guarantees that the said Indiana & Chicago Railway

Company is under no binding obligations to issue any stock except as aforesaid, except in connection with and as payment for the procuring of certain rights of way." I understood the situation to be exactly as recited there; that I was buying every dollar of stock that was or could be issued, except the ten thousand dollars of Mr. Foster.

Q. And you supposed, from your acquaintance with Mr. Foster and your knowledge of him, that he was able to control these other certificates that were outstanding—the baby certificates in the names of these other people?

A. I did. He assured me that he was, and I judged also
1451 by the talk I had had with Mr. Hardy and Mr. Little that
the community wanted the road very badly, and were willing to do almost anything to get it.

Q. The contract provides in the last clause as follows: "It is further agreed that the said stock certificates hereby purchased shall be this day deposited with the First National Bank of Chicago, Illinois, to be held by it in escrow until full payment of the purchase-money herein." Was that provision of the contract complied with?

A. No; it was not; my impression is just the same as Mr. Foster's, that Mr. Starin, the same day of that contract, as you will perceive there, made a payment of $5,000; it is endorsed right there in Mr. Starin's handwriting on the inside of the contract, and my impression is simultaneously almost with that; Mr. Foster handed me over the certificates of stock; I know they never were put up in any bank or anything of that kind.

Q. As to the ten thousand dollars of stock which Mr. Foster still retained, was there any understanding, verbal or otherwise, between you and Mr. Foster on the 23rd of June, or from that up until the 15th of March following, that you were to become the purchaser of that?

A. My impression is that I treated that stock as hardly entitled to be considered as stock for which anything had been paid; I looked upon it rather as a gratuity that had been voted to him for services, and I can say very frankly that it never had any value in
my eyes until I was compelled to buy it in March, and I
1452 think that, reading between the lines a little, a man might
observe that I was under a little moral pressure at that time, and that the attitude a certain gentleman was taking was with reference exclusively to compelling me to buy that outstanding stock.

Q. The other stock, the $50,250 of stock which you had bought on the 23rd of June——

A. Had been issued on engineer certificates for work done.

Q. For actual work done, as you supposed then?

A. I presume so.

Q. Have you seen anything to the contrary since, or do you know?

A. I did not go down there until after the situation of things had utterly and entirely changed; in the fall of 1881 I was building the Air Line road, and just at this particular time we were negotiating the consolidation with the Louisville, New Albany & Chicago, and I was absent from home almost continuously, and, as I have stated, I never went down upon the property before I bought it to see it; I did not go down, I think, not even to see the property, until March, 1882, so I was not able to distinguish what was original work, if I even inquired, with what it was then; then there had been 20-odd miles of road actually completed and considerable more work done.

Q. You speak about pressure being brought to bear upon you; your understanding was with Mr. Foster that as you had bought out this stock on the 23rd of June, which was a large majority of all the stock of the company, and there being no bonded debt,
1453 that your say-so should have a large control in the affairs of the company from that time on.

A. I used the word pressure in this sense, as you will perceive by that contract; I think it is in the contract, if it was not understood; I think it is expressly recited in the contract that the board of trustees were to resign at my request; I think that is right in the contract.

Q. It is.

A. When I called upon the gentlemen to do that there was an absolute declination until I bought Mr. Foster's stock; that is what I mean by pressure, to put it fair to you.

Q. You purchased that stock in order practically to carry out this contract of June 23d, did you not?

A. I purchased it, Col. Cooper, for this reason: I had at that time, in March, 1882, put into that concern and was obligated for half a million of dollars nearly, and probably have seen enough of Mr. Foster to know that he is a very peculiar man; and he seemed to think that my province was to respond to his checks, and that was all I had to with it.

Q. You were to be simply a paymaster?

A. I was to be simply a machine to raise money for him to spend; and when I sent down a construction contract it was then thrown back in my face without a word of suggestion or explanation or anything of the kind. And I had an impression that the man who owned a horse and buggy had a right to drive it, and accordingly I visited Goodland in March, 1882, and I had been trying by letter to get Mr. Foster to call the board of directors together, but some-
1454 body was always sick; there was always some impossibility and I could not understand it until I went down there, and I very soon got at the drift of matters which was there there would not be any board of directors called together until I bought that stock, and I submitted to the inevitable.

Q. You bought the stock in order to get complete control?

A. I bought the stock in order to get out of a muss that I saw I was getting into there, and simply to get that out of the way, that accounts probably for your questions the other day as to how quickly his anxiety for the townships oozed out when he got his stock bought.

Q. That construction contract you spoke of as being thrown back at you was the same one that was introduced in evidence here by Mr. Foster?

A. Yes; I think so; I see that is in the handwriting of a clerk I had in the office; I have no doubt but what it is.

Q. On the 15th of March, when you had bought out the balance of stock of ten thousand dollars, you then supposed you owned it all?

A. I did.

Q. At that time were there any debts against the company that you knew of?

A. At that time?

Q. Yes.

A. I knew that the Cleveland rolling mill bill was partially unpaid, and I knew that the Bessemer Steel Company's bill was unpaid; outside of that I don't think, Col. Cooper, that there were any bills unpaid to my knowledge, and this examination has not——

Mr. **Butler**: Except what it owed you?

1455 Probably that would not be considered a debt; I don't know; but I understand Col. Cooper's question to mean outside of myself; my impression is that outside of those two matters that there is not to-day, as far as I can ascertain, any debt whatever of the Chicago & Great Southern Railway Company that is earlier than March, 1882; I may be in error about that, but I don't think so.

Q. Then, of course, you expected to take care of the Cleveland Rolling Mill Company's claim and the Bessemer Steel Company's claim?

A. I always expected and hoped, down until the 28th day of October, when the receiver was appointed, that every man that had got a dollar against that concern would be paid, and I strained my credit and my pocket at all times up to that date to pay them.

Q. That being the situation, you felt at that time, as you have expressed it very aptly here, that you were practically a corporation sole[ly]; you owned the Chicago & Great Southern Railway Company.

A. I presumed honestly at that time that I owned every share of stock that company had issued or was under any obligation to issue, except the obligation upon rights of way, which I intended to liquidate in money and not in stock, as Mr. Annabal has testified; I gave him positive instructions.

Q. Then to lay aside the obnoxious character of the terms employed here, such as creatures, and so forth, in the answer of Swan and Atkinson from which counsel for complainant has read 1456 to you, these gentlemen that you selected, Mr. Crawford, as directors, you expected them to do your bidding, did you not?

A. No, sir; not in that sense, Colonel.

Q. I don't mean to say they were to do anything dishonest at your bidding; you would not ask them to do that; but whatever you as the sole owner of that property wanted done, you would expect them to do it?

A. Not in as broad a sense even as you put it. I take an entirely different view of that situation, from what, not only the pleadings do, but from what you intimate now. I have known, and no doubt you have, of numerous instances where people have been what might be called nominal directors; I mean by that where the main owner has put stock into their hands, and they are very far from being creatures, and they are very far from being entirely subordinate to the will of the owner of the stock, and I did not expect and did not intend that the people that I put in there should be robbed of their manhood or that they should be compelled even to do a formal thing, nor did I ever ask them to do a formal thing, that if they had been the owners of a large amount of stock in their own right they would not equally have done.

Q. What I ask you is this, Mr. Crawford, whether you would not from your relations with those gentlemen, whom you designated as members of the board of directors, and your supposed entire ownership of that property as being in complete domination of it, whether you would not have regarded as bad faith any honest fair thing that you proposed to have the directors do which they should refuse to do?

1457 A. I would have expected them to have done any honest thing whether I had put the stock in their names or whether they themselves owned it. Now, let me illustrate, and I can illustrate it, I trust, without the slightest degree of offense. John B. Lyon is the owner, or was the owner, of the Indiana & Illinois Southern Railway Company, and he did just exactly what I did in this instance; he put into the hands of certain individuals, we will say, nominal amounts of stock. I understand by that neither that they became his creatures nor that he had any right to expect that they would act in anywise different from what they would have acted if they were owners of the stock, although they may have been his son-in-law and his counsel and his partner and an employe.

Q. Would you, under the circumstances attending the election of these gentlemen to the board of directors and their conduct of their respective offices, have tolerated from them a policy with regard to the operation of that road, its construction, the handling of its securities, the making of contracts, so long as your proposition was a fair and honest one, different from your own?

A. I don't know that I can answer that question except as an hypothetical case, for this reason, that you will observe at once that from the hour that I had to do with that corporation in March, and from the hour that these gentlemen that you have indicated had to do with it, the company never had a dollar of its bonds nor a dollar of its stock that it had any control of practically on earth.
1458 So that, as stated this morning, I not only regarded myself, so to speak, as a corporation sole [ly], but I also stated, I think, but if not, I repeat it here, that I regarded practically what was done from that time onward as more a formal matter than a matter having no practical bearing.

Q. Still I don't think you quite answer my queetion, Mr. Crawford.

A. I want to do so if I know what it is.

Q. It is this: Let me state the situation as I understand it. Although this preperty was in the form of a corporation, and the work had to be done as a corporation, yet you were the owner; you were the sole man that had any interest in it, as you understood it. Now, what I am asking is this, whether your policy or direction or control was not a matter that you insisted upon, or, rather, you had your way about it, and these gentlemen never objected to what you did from the start.

A. My impression is, and I answer the question as I understand it, that the board of directors from and after the 15th of March, 1882, never did but three acts that you could designate as anything beyond the merest formality in the world. The first was my construction contract, the second was my consolidation, and the third was the nominal auditing by mere arithmetic per mile what the amount of work that I had done and what I was entitled to under the terms of the construction contract. Now, outside of that, I answer your question also by stating that the board of directors of
course had not anything to do with the building of the road;
1459 I mean on the theory that I was building it under my contract, and therefore there was no occasion for me to differ from them in judgment at all.

Q. For instance, when you wanted that construction contract passed upon, and the form of the mortgage approved formally by the board, and the authority that is given in the meeting of March 18 with reference to the million dollars of bonds, you called a meeting, did you not; you called the board of directors together?

A. I undoubtedly suggested there ought to be a meeting for those matters.

Q. At the time you were president?

A. Pardon me just a moment. The mortgage had been authorized; it had been executed, it had been acknowledged and recorded, and a million dollars of bonds had been issued under it before that time, and the question was simply formally putting it upon the record, was just as idle a formality as for counsel to sign his name at the foot of a pleading. The only thing that was done, as I said, beyond formalities, it seems to me, at that meeting, was the simple question of my construction contract.

Q. You heard Mr. Starin's testimony as to what occurred with reference to that?

A. Yes; I was present.

Q. Isn't that substantially correct, as you remember it?

A. I think so, except this: I think Mr. Starin probably put at a larger valuation my connection with the matter than I would, as a
matter of memory. Mr. Starin bore a very pecuniary relation
1460 to me at that time; he was my confidential man and a very valuable man, and if I was asked as a mere matter of memory, although I do not pretend to put my memory ordinarily as against his, I should have stated that I sketched out in rough to

Mr. Starin the kind of construction contract that I thought ought to be made to cover the formal issue of the bonds, for that is the only way you can get bonds and stock out that ever I heard of under modern railroad building, and my impression is that Mr. Starin substantially reduced that contract to form and had put into typewriter.

Q. Isn't it very largely copied verbatim from the former contract that was submitted in February of that year to the board of directors and by them rejected?

A. I haven't looked at it closely—my own impression is, Colonel, you will find that too is copied from my Air Line construction contract; I judge so by a hasty reading of them.

Q. These other gentlemen had no moneyed interest in this road, had they?

A. No, sir.

Q You owned it all?

A. As I stated, I had bought all the stock on the 15th day of March, 1882, and I transferred to each of these gentlemen, or attempted to do so, a share of stock apiece.

Q. That is the paper that has been introduced in evidence?

A. The paper that is introduced is the paper to which I refer.

1461 Q. That is the only transfer or evidence of transfer that was ever made to them?

A. It was. It was not up to that time, and not for some time later—that is, there was not much ceremony about any of it. There never had been any stock-book. The entire avails of the corporation up to March was that record-book.

Q. You did not charge them anything for the share of stock apiece; you did not intend to; it was a mere form to qualify them as directors?

A. I presume it was exactly like similar cases that have occurred ever since the history of corporations. Where a man ownes a large amount of stock, or owns the control of the stock, why they transfer stock very frequently to constitute or make a person eligible for director; I presume you probably have known of such experience, as well as some others of us.

Q. Isn't it true that the matter of the construction contract, and the matter of the board of directors was practically a matter of form that was necessary to go through in order to accomplish what you desired, namely, to get legally issued the bonds and stock of that company?

A. To a certain extent that is true. I do not know any way in which bonds or stock of a corporation can be issued except, first, by people making stock subscriptions, and pay a hundred cents on the dollar; that is rare. And also the other way is by a construction contract by which somebody shall, in advance of any work,
1462 take risks, and take a lump sum, either in money, if the company is fortunate enough to have any money, or, if not in money, in stock and bonds per mile, or for a lump sum, to construct a piece of work. And I had no other resource except to adopt the last

course, because the company had no money; nobody had subscribed for any stock; it had not a dollar of stock subscriptions; it had not any assets.

Q. That is not quite true, that the company had not a dollar of stock subscriptions, is it? There were some small sums subscribed, which the testimony shows you agreed to take care of.

A. Possibly that may be correct to that extent. What I mean is that they had not anything in the way of assets to build a railroad, nor to build an inch of railroad.

Q. Do you remember whether, at the time you bought Mr. Foster's interest, in June, 1881, whether the towns had at that time voted the aid to the road—the four towns, or any of them?

A. My impression is that in one of the four townships that the election had been held, but there had been no stock subscribed for, nor did the election recite that it was to be for stock.

Q. That was, under the law of Indiana, as I understand, an option?

A. To a certain extent, yes.

Q. How much in all was paid by those towns, Mr. Crawford, as near as you can remember?

A. I have been trying to find out; I don't think, Col. Cooper, that a dime of it ever went into my hands. My impression is, that just before this March meeting, in 1882, Mr. Foster collected somewhere about $13,000 or $14,000 from some one or two or all of those
1463 township taxes.

Q. What did he do with that; what is your understanding?

A. I presume it went into the work; it did not go into my pocket, and I shall not say it went into his at all. I presume, and have no doubt at all, that it went into the work. My impression is, from all my recollection on the subject, that somewhere about $40,000 has actually been paid over by [the] treasurers of the two counties, that has ultimately found its way into the work. I can state how that was done. After I had to do with it, as I am informed, Mr. Annabal pretty largely managed that thing down there, and wherever there was a creditor who was a tax-payer he would be given an order on the county treasurer that would be accepted in lieu of taxes, so that in reality no money passed.

Q. He paid his taxes with the order?

A. He paid his taxes with the order, and that at the same time liquidated the claim that he had for a little graduation, or something like that. Then other creditors were given orders on the treasurer calling for money, so that as a matter of fact very little money ever passed over from the treasurers directly to the company; I don't think a dollar I ever had or ever came into my hands.

Q. Did you examine the record-book of the company prior to the time you purchased the stock of Foster?

A. I never saw it.

Q. When did you first see it?

1464 A. My impression is that the first sight that I ever had of the record-book was when I went down about a day before the 15th of March, 1882, and I asked to see the record-book, and then was the first idea that I had that that contract that I had sent down for construction had been unanimously and ignominiously rejected.

Mr. PIERCE: They had not notified you?

A. No. I saw that something was the matter, and I insisted that Mr. Foster should call the board of directors together and I should know where I stood. I was getting pretty rapidly into a corner, everybody expecting me to pay bills, and I had not anything to pay them out of, and I had not a dollar of securities at that time.

Col. COOPER: And you had not a dollar of obligation from the company?

A. Not a dollar of obligation from the company and never did have. I had hypothecated the securities for the Coal road, exactly as Mr. Foster had required I should.

Q. Speaking about the Coal road and the hypothecation; it was understood between you and Foster that you should use those bonds to secure the payment of the debt to Dull & Company for the Coal road?

A. It was. I had at that time, and to his knowledge, transferred that contract to the Chicago and Great Southern Railway Company, so that I was in this fix: I owed for the property, and yet I had transferred the right to it to the Chicago & Great Southern Railway Company. Mr. Foster when he was on the stand forgot, probably, a matter of recollection. Mr. Foster and I talked over the necessities of the situation, and what ought to be done with these
1465 securities, and, as I told you, I think I was in New York
when he came up here and signed them, and Mr. Foster, at my suggestion, made a memorandum, which really never went into the form of a contract. I am not able to state at this time what was the special reason of it, but I now produce it as being a paper which really states what the understanding was with regard to these securities, it being a paper made by Mr. Foster at the time he signed these bonds and delivered them to me, and all in his own handwriting.

Mr. PIERCE: Was it delivered to you?

A. I think it was not delivered to me; it was left for me.

Solicitor for complainant offered in evidence the paper produced by the witness, which is marked "Complainant's Exhibit 12."

Col. COOPER: That memorandum you found for you when you returned from New York and found the bonds there?

A. My recollection of it is, I was in New York on other matters, and when I got back I found the bonds here, and Mr. Foster and I had stated before—we had discussed what should be done, and what the necessities required should be done, in the matter, and I suggested that he should draw out a memorandum, and why it was never executed I don't know, but that is the original memorandum. It is all in Mr. Foster's handwriting, and states, as I remember it,
the conditions under which he handed over the bonds. It
1466 only varies from his statement, as you perceive, in being
more precise, and in stating that the bonds were to be held

as my security after the Block Coal road had been taken care of, putting me in the second rank.

Q. Practically where the First National Bank was with Drexel, Morgan & Co.?

A. Yes, sir.

Q. You state that you put in of your own money upwards of $960,000, without counting any interest or anything for the services of yourself and son?

A. Did I say upwards or about?

Q. I may be wrong about that "upwards;" it may be you said "about." I don't know how that is. Now, do you state that from general memory or have you got construction-books which were kept during the progress of this work which would show the amount of money put in?

A. I said it partly from memory, for I have a very thorough knowledge of the extent to which my resources were drained. I also state it from books and memoranda that were made from time to time during the earlier progress of the work, and chiefly from vouchers and pay-rolls which I have. The course of business during the earlier part of the work and in 1881 was that payments were made on vouchers which were approved and kept by Mr. Foster until he turned over all papers in March, 1882. Subsequently to that the payment, so far as material was concerned, was made upon vouchers that, to a very large extent, were handled and paid by Mr. Starin; I think, to the next largest extent, possibly by 1467 my son, and, to a very minor extent, a trifling extent almost, by myself. I make this statement so that it may be understood precisely that my main connection with this matter has been to furnish money and not to keep the books, and therefore I can only state from the papers themselves pretty largely. I have prepared a list of the vouchers, which I have now before me on the table here, and a memorandum of the pay-rolls. All expenditures on the road should be either presented by these vouchers or the rolls.

Mr. PIERCE: And are so represented.

A. As far as I know. But I am cautious in speaking about the matter because, as I stated, I was the individual to furnish the money, and other people looked after the expenditure of it pretty largely.

Col. COOPER: Before I go into that matter. You had to trust and did trust to people along the line of the road, and also to people in your office in the matter of expending your money, and to see to it that you got value for what you paid.

A. Yes, sir; still, I don't want to divorce myself from the responsibility of being at the head of the concern, and, therefore, from time to time people would make reports to me of what had been done; but about looking after the details, I have really not much to do with it.

Q. I will ask you whether you are able to state from your recollection, Mr. Crawford, your general recollection, about the items of construction generally in round sums—about what they amounted to?

1468 A. Do you mean divide them by classified expenditures?

Q. Yes.

A. I don't believe I could off-hand, but I know in a pretty general kind of a way about some of the heads, I think. But I have got them all assorted here for you.

Q. Are those statements you have there—do you know of your own knowledge positively that they are correct, or will you tell the commissioner generally just how it was made up?

A. Let me illustrate what the extent of my knowledge is: These vouchers are divided out into heads that are usual in railroad construction. Of course, as every railroad man knows, one of the principal items is the question of rails; now, the expenditures have been classified under the heads of rails, bolts, splices, and so forth, making one head of the iron that goes into the construction. You ask me whether I know that they are correct. As a specimen, I exhibit to you the form of a voucher to the Cleveland Rolling Mills. (Exhibiting voucher to counsel.) I have every reason to believe that is correct, first, because I do not believe that the Cleveland Rolling Mill Company would make a false report; and in the second place, that has been through the hands of Mr. Starin, and paid by him, and checked by him, and stamped by him, and I have every confidence that he is honest and did not cheat me, and that represents just exactly the amount of money that was paid upon it, and that the receipted bill shows. The receipt is on a draft there; they drew on me for the money. I think that is stamped across
1469 there "Paid. W. A. Starin," isn't it?

Q. Yes. That is the rubber stamp to which he referred in his testimony?

A. Yes, sir.

Q. Which he used as treasurer of the Chicago and Indianapolis Air Line?

A. He used it also in my other matters. The stamp is on the outside in the same way. Now, I perceive, as I now show you, that every one of these Cleveland Rolling Mill vouchers has been paid by Mr. Starin. There (indicating) is one that apparently is not stamped on the outside, but is inside. Then here in the voucher to the Buffalo Nut and Bolt Company, paid by him; I think you will find on examination that that was paid by him, and is Stubbs & Runyon. There (indicating) is another Stubbs & Runyon paid by him. Now, the next largest item outside of grade in the material account are the ties and the timber. There (indicating) is a pile of vouchers for those, and you can see the manner in which they are kept.

Mr. **Butler**: Have you got all these listed in the book you produce?

A. They are; yes, sir.

Q. So that we can use the book in place of the vouchers?

A. Yes, sir.

Mr. **Gardner**: That is the book there? (Indicating book produced by witness.)

A. That is the book there.

Col. **Cooper**: When was that book made up and by whom?

A. My son made up this book, taking these vouchers.

Q. How long ago?

1470 A. He has made it up now, just for this purpose. You have a package in your hand. You can perceive just how it is made up. You can compare the vouchers with the book, and I think you will find it correct. I have had it all carefully compared. My son, my wife, and myself have been over it together and checked them off.

Col. **Cooper**: I cannot, in the limit of this cross-examination, go over all these vouchers. I simply want to ask the witness as generally as he can remember about the matter.

Q. Do you remember the total cost of the iron—the metal that went into the road?

A. Do you mean as mere matter of memory?

Q. Yes.

A. No, I could not state that I did. I can only state that I know the person from whom the iron was purchased, and I know that from time to time it was paid for. The only iron bills unpaid is a balance due to the Cleveland Rolling Mill Company and to the Pittsburgh Bessemer Company. For the Pittsburgh Bessemer I am personally obligated, and the others, of course, are shown by the original receipts which I have here in my hand.

Q. How much do the vouchers you now have represent?

A. The vouchers and pay-rolls, Colonel? I have not separated them.

Q. Yes.

A. The vouchers and the pay-rolls paid; paid pay-rolls, I mean?

Q. And the paid vouchers.

A. And the paid vouchers, as near as I can get at it from the best attempt to get at the exact figures, amount to $1,011,934.60.

1471 Mr. **Butler**: Does that mean you have the vouchers and pay-rolls here representing that?

A. Not the pay-rolls; the pay-rolls are not here.

Q. I mean the vouchers.

A. Outside of the pay-rolls; why the vouchers are all here except to a limited amount; that I will speak of in a moment or two.

Col. **Cooper**: Doesn't your tabulated statement there show how much is represented by the vouchers that are produced here?

A. Certainly; when you come to divide it out. I have not footed it up, but the amount of the pay-rolls is $186,512.10. Of course, the vouchers would represent this total sum of $1,011,934.60, less $186,512.10.

Mr. **Butler**: Then, you have over $800,000 of vouchers right here on the table?

A. Yes, sir. You asked a moment ago about the rails; the footing of the rails, bolts, spikes, and so forth, amounts to $206,640.89.

Col. **Cooper**: That is from Attica to Fair Oaks?

A. Yes, sir; it embraces a little more than that, Colonel, because there was new work done down on the south line, and then — replaced some of that iron down there with steel.

Q. But that is the total sum?

A. That is the total sum as it is footed.

Q. For track?

A. For rails, bolts, and spikes, as represented by actual receipts.

Q. Do you remember how much in the aggregate the ties were?

A. I can give it to you from the footings. I have here
1472 before me the footings, which I believe to be correct, and they
are separated under different heads, and are represented by vouchers which are right here before me. The ties, timber, and piling amounts to $61,952.98.

Q. Have you any account of the right of way?

A. Yes, sir.

Q. How much is that?

A. The right of way is $26,680.95.

Mr. Butler: That is, that is paid for?

A. That I paid for in cash.

Col. Cooper: Mr. Crawford, is there not in these vouchers, in this total sum of over ten hundred thousand dollars, is there not the work that had been done prior to your connection with it?

A. That is what I was going to state a moment ago. This voucher, as I stated in my answer, which probably you did not note, but which I guardedly —. I said that these vouchers before me represented money that I had paid out in connection with the Chicago and Great Southern Railway Company. Of course, that included $29,000, you know, which I paid to Foster, but I did not include in the general statement which I gave you of about $960,000; it did not include the margin which I had left of $50,000, which was the utmost which could have come from township aid. You see the total amount there which I give is about $10,000 over a million; deducting $50,000 from that, it still leaves me an absolute personal outgo of $960,000, without interest.

Q. Are there not on the pay-rolls or amongst the vouchers represented by this aggregate sum the money which had been
1473 paid out for work done before you had any connection
with it?

A. No, sir; none of these vouchers; I did not understand your question before. None of these vouchers embrace anything before the first of July, 1881. I have embraced that in this wise, as you will perceive by looking at the account. I simply undertook to figure this up and show connectedly how much money I had sunk down there—paid out. Now, I see in there, under the head of "purchase of property," $29,000 paid Foster. Then here is the Dull payment, made by Drexel, Morgan & Co. That makes $247,217.46. Now, that first item embraces, of course, all work that has been done before I bought in June, 1881, embraced in that way.

Q. That is to say, you paid Foster $29,000, and you call that work that had been done before, so far as this account is concerned.

A. I simply undertook to present that as an account of my expenditures in connection with the Chicago & Great Southern Railway Company, but I answer your question that there are no vouchers here that represent specific work done prior to my purchase; so that there is no duplication in any sense of that term.

Q. Some of these items include, do they not, money expended in developing the coal interests down there, *do they not?*

A. No, sir.

Q. None of them?

A. No. I want to make an explanation so you may under-
1474 stand it Colonel. If you will look there at the bottom, under
the head of "equipment," I went to explain there what there
is. I think you will find the last two items there, or about that, for an engine, do you not?

Q. Yes, the third item from the bottom, on page 31st.

A. Now, there are no receipted vouchers in this pile for that. When I was building the Air Line road I bought some engines over there, and when I got through with that why these engines were taken over to the Great Southern and an appraisal put upon them of $2,000 apiece. That was very low, and I simply debited the concern with that, as though I had bought them for $2,000 apiece, because I was charged with that amount, and I simply debited the Great Southern investment as though I had bought these two engines then for $2,000 apiece.

Mr. PIERCE: And the same is true of the other two items?

A. Yes, sir; I think there are one or two other items there.

Col. COOPER: Yes.

A. Now, if you will be good enough to look under the head of "ties, timber and piling," and look clear at the foot of that, you will see, I think, two items, one for ties at Hammond and one for ties from Frankfort. Now those were ties—the Hammond ties were a lot of ties that the Air Line road had bought from Miller & Christy that had been delivered at Hammond, and I took them at a valuation of 28 cents apiece, just as though I had bought them at that time, and I charged them into the Great Southern, and they went into
the construction of the road just as though I had bought them;
1475 and the same is true of the Frankfort ties. Those were oak
ties and were shipped across. They were surplus ties that
were left after we got through over there, and I took them, and they were charged to me, and I charged them to this account at the exact prices that I paid for them. They were paid for in such a way, so that there were no vouchers, because it would be a voucher from one hand to the other, simply.

Q. This total amount you have given of something over a million dollars represents money you got from Drexel, Morgan & Co.?

A. Of course, and it also represents the vouchers that were paid out of the money from townships, Colonel.

Mr. BUTLER: Do you say you have checked this book with the vouchers?

A. Yes, sir; very faithfully.

Mr. PIERCE: Who made these footings—who footed them up?

A. They were footed by a gentleman—I confess I don't know his name—a gentleman in Mr. Porter's office, Mr. Porter's book-keeper.

I told him I didn't want anybody to foot up the concern; that I was responsible for it, and I wanted it done accurately and faithfully, and I just gave it to him as it was. I simply checked it off; I have not footed it up myself.

Col. COOPER: Without going through these vouchers, and they are very numerous, are they not?

A. They are.

Q. Embrace several hundred, do they?

A. More too.

Q. Up into the thousands, perhaps. Without going through those vouchers, you know pretty well where the money came from, don't you? You paid it? 1476

A. In a general kind of way I do; yes.

Q. Have you tried to tally that part of the matter with your vouchers here—that is, as to where you got your money and what money went into this road?

A. I have not thought to tally it. Of course I knew pretty well as I went along where I was getting my money from, and I don't think that that amount embraces the money that I have spent. Now, in the earlier part of the work Mr. Lacey kept, or undertook to keep, regular books of account, in which every voucher was entered and recorded by a number. If he kept any in the last year or two I am unable to find them now, and of course this all new matter sprung upon me without the slightest knowledge, until within the last two months, that these old matters would ever be gone into, and I have simply undertaken to arrive at the correct result from the facilities that I had to do it with.

1477 Q. The vouchers that Lacey took or made a memorandum of, then, are included here, are they not?

A. Of course there are some of them here, but what I mean is there was a regular book that was kept at first in which whenever any payment was made it was put into a voucher, and that voucher was recorded by such a number. Either that plan was not adopted towards the last, or if it has been adopted I have been unable to find the book in which it was copied; therefore all that I could do was to get these vouchers together and assort them and put them up. I can remember pretty well, in answer to your question about where the money came from: I have made a great deal of money in the construction of the Air Line road. I thought I had made a great deal more than it turned out, because the securities I got went down very rapidly; but prior to the Drexel, Morgan & Co. contract I remember very well that there was a footing made up by Lacey, who kept the books, and I had in the property at that time, Colonel, over $400,000 of actual cash money—that is, before Drexel, Morgan & Co. made this contract with me; then they put in $350,000; that made $750,000. I collected, as you very well remember, from the Chicago, Milwaukee and St. Paul Railroad Company in 1883 over $120,000, and outside of what was paid for legal expenses in that matter I paid every dollar of that into that work. I have got an account made by Mr. Starin, in which in one month he paid out

for me $88,000 into this work, practically. It is true that
1478 during that year I was in receipt of some very large fees. I
do not care to state, and I presume it will not be insisted on
that I should state, where I got them from.

Q. No; I do not want to go into that matter.

A. It amounted in the aggregate to a hundred thousand dollars, and I put every dollar of that into the road, and I put a large amount of it in after it was absolutely hopeless. I borrowed money from friends to put in. I mortgaged, as Mr. Starin stated here, in order to pay creditors—I mortgaged the residence that belongs to my wife, and every dollar of that money went into this work; and for every dollar of that last amount, amounting to $250,000, which I used to pay the creditors of this concern, I had not a dollar of security, and had nothing to authorize me to make the expenditure except, first, a desire to pay the debt, and, second, the hope that times would get better and I would be enabled to either make a sale of part of the securities or else a loan upon them; but I robbed my family towards the last—actually robbed them for the purpose of paying such men as Mueller & Christy and these other men who are now smutting me.

Q. You don't understand that there is any smut attempted to be thrown on you, Mr. Crawford, do you?

A. Col. Cooper, I do not understand that there has been anything from first to last since this pleading was filed except to attempt to personally stain me as being a wrongdoer.

Q. Don't you understand that the entire question between
1479 Mr. Porter and these creditors and these stockholders is sim-
ply a question whether, under the facts of this case, these
creditors have got a prior right to Mr. Porter here?

A. No, sir; I do not understand it that way. I would have had no complaint to make of anybody if a clean cut legal question had been presented here for the purpose of determining the legal rights and equities as between Mr. Porter and the people who held construction debts; but when they undertake to complain that my connection was fraudulent and that I made a dishonest report, and if I made an honest settlement not a dollar was my due, and that I only had about $50,000 in that work and had borrowed money upon it securities, which I had put in my pocket, to the amount of $350,000 from Drexel, Morgan & Co., and then I turned in and sold the property and pocketed $250,000 more in a speculation with Mr. Porter—that is what I complain of, Col. Cooper, and I think I have a right to do so.

Q. Don't you know perfectly well, Mr. Crawford, as an attorney who himself has had to do with cases of this kind, that it often occurs that creditors, not knowing what the facts are, make allegations on information and belief, and that there are charges of fraud made which are merely a legal fraud; that is to say, where a contract is made by a party in control of the corporation, practically that meaning; you understand those things, do you not?

A. I understand, of course, the license-counsel exercise, and I have made no complaint of that kind; but this pleading has not

1480 stopped at anything of that kind; charges of actual fraud are made—that I have robbed the company and that I have turned in and made a great big speculation out of it, when every man connected with it knows perfectly well that I have lost a splendid fortune in it and have got nothing except this smut in return. I do not want to say all this; I have no right to say it, but it has been forced out of me.

Q. Don't you know, as a matter of fact, that Mr. Atkinson, who signed and the counsel who prepared the answer that you complain of, simply had information coming from your former employees; don't you know that?

A. I don't know, Col. Cooper, who prepared that document; I trust that it was not you.

The witness here produces a book containing a tabulated statement of the vouchers classified, and it is agreed that the book and the vouchers may go in evidence together for what they are worth, and that Mr. Crawford shall retain possession of the vouchers until such time as they may be wanted by counsel for either party, when they shall be produced for examination; and that when the tabulated statement in the book shall have been verified by a comparison with the vouchers, so far as the statements in the book are correct and in accordance with the vouchers, the book shall take the place of the vouchers as evidence in the case for what it is worth.

Mr. Butler: Where are the pay-rolls?

1481 A. The pay-rolls, I think, are in Indianapolis.

Col. Cooper: Along about the time you made the contract with Drexel, Morgan & Co., you began then to be somewhat solicitous about the future of this enterprise, did you not?

A. Yes; I had begun to be solicitous before that; I had made one or two unsuccessful attempts in 1882 to get a loan on the securities that would take up the Dull note and give some more money, and had been unable to do so; one instance has been testified to here by Mr. Jewett—that is, with Mr. Jesup; and I tried with the people connected with the Louisville, New Albany and Chicago railroad to make a large loan and pay off that Dull matter and give me funds to further prosecute the work; not to pay myself back anything, but even go on with the work, and was unable to do it.

Q. At how early a time did you see Henry H. Porter or Samuel M. Nickerson or L. J. Gage with reference to this enterprise with a view to getting them to take an interest in it.

A. I first saw Mr. Porter along in the very early spring—I should say somewhere in February or March of the year 1884; I never saw either Mr. Gage or Mr. Nickerson in regard to the matter until after the securities had been published for sale.

Q. What came of the first negotiation with Mr. Porter?

A. Nothing came of it.

Q. He went down over the line of the road?

A. He did; he went down over the line of the road with some gentlemen that he invited to go along with him whose names,

1482 I think, have been given by him—Mr. Marshall Field, Mr. Keith, Mr. Byron Smith, Mr. George L. Dunlap, and Mr.

Lawrence; I guess that is all; and he declined to do anything whatever with it; he said times were bad and squally.

Q. When did you take up the matter next with him?

A. I didn't take up the matter next with him at all, Col. Cooper.

Q. Did you never have any negotiation with him in reference to his doing something with regard to relieving you there at Drexel, Morgan & Co.'s some time in the year 1884, along in May?

A. No; I cannot say that I negotiated with him at all. As I said in my examination this morning, Mr. Porter came into it finally in consequence of negotiations which Mr. Gage had with him, and which I did not have with him personally.

Q. Had you seen Mr. Gage about the matter?

A. I saw Mr. Gage, as I said, and I told Mr Gage of the fix that I was in; that the securities were all there with Drexel, Morgan & Co., and they were liable to be sold out and I would lose whatever I had in the concern, and the bank would lose its second lien, and that I had a negotiation on foot that I thought would result in my obtaining a loan.

Q. How long a time had you been negotiating with Drexel, Morgan & Co. before that was consummated—that matter—the contract of January, 1883?

A. You are going back now from 1884 to 1882.

Q. 1883.

A. To 1882—the last part of 1882.

Q. Yes.

1483 A. All of the fall of 1882 I was in New York in the reorganization of the Chicago and Western Indiana Railway Company. I spent two or three months there and did a work that resulted enormously to the advantage of Drexel, Morgan & Co., and it was as a kind of recompense for the work which I did in that respect they as a personal favor made this loan to me. I presume that negotiations as to the form that the loan should take spread over, I should say, a month at the least.

Q. Did you tell Drexel, Morgan & Co. what your relations were to the company—to the corporation?

A. I don't know that I did especially; I know I told them this—what I had spent on the property, giving them about the sum of money; I think Mr. Lacey prepared a tabulated statement from all the vouchers and pay-rolls up to that time, and they had Mr. Roswell Miller, I think, go over the property and examine its physical condition. I then told them that the securities were in New York at the Equitable Deposit Company, and that they were pledged to Mr. Dull, and that he was threatening to sell me out, and Mr. Morgan, Mr. Pierreponte Morgan, sent down to Pennsylvania and had Mr. Dull come up to New York while I was working on this Western Indiana matter, and Mr. Morgan said to Mr. Dull that he didn't want him to distress me any about that obligation; that as soon as I got through with the Western Indiana matter that they would make some negotiation that would liquidate that demand, so that he knew that all the securities were right there at New York, and that Mr. Dull held them in pledge.

1484 Q. Did he or not know anything about your construction contract?

A. I don't think he did; I don't think there was ever—I know it was never shown to him.

Q. You never purposely concealed that from him?

A. Not all; no, sir.

Q. Nor from Mr. Porter, nor from Mr. Nickerson, nor from Mr. Gage?

A. Never; as a matter of fact I don't think it was ever specially spoken about; I know neither of them ever saw it.

Q. Never saw the construction contract?

A. No; nor the record-book, I don't think, so far as I know.

Q. Wasn't there some considerable negotiation, or rather examination of title of these bonds and the mortgage and the affairs of the company by the attorneys of Drexel, Morgan and Co. before that matter was consummated?

A. The attorneys of Drexel, Morgan & Co., Mr. John C. Bullitt, of Philadelphia, and Messrs. Baker, Hord & Hendricks, of Indianapolis, had the articles of association of the Chicago Block Coal Company, together with the opinion of Messrs. McDonald & Butler that the foreclosure was, in their judgment, all regular, and that the company had good title to its property. As far as the Chicago and Great Southern was concerned, the counsel had a certified copy of the articles of association and of the change of name, and then they had all of the rights of way presented to them, showing the ownership of the company to its land; then they had a certified copy of its mortgage to Mr. New, and I think that is all they had; and they
1485 had a tabulated statement of the amount that had been expended.

Q. In your interviews with these gentlemen—with Drexel, Morgan & Co., or any of the firm or their attorneys, or with the officers of the First National Bank, or Mr. Porter, or their attorneys—was the question never raised or suggested as to how and in what manner you came by the bonds and stock?

A. I don't think it was.

Q. You are not conscious of ever having concealed it from them?

A. I am not; I don't think I ever concealed anything from anybody that was asked me with regard to the matter.

Q. Do you remember of the question ever being asked you how and in what manner the company was organized; who its board of directors were?

A. I think not.

Q. What relation you had towards it?

A. I think not. Here was the situation, Colonel, if I can make myself clear: Of course you understand thoroughly, as does every business man, that these gentlemen were not making advances on stock; they were making advances on bonds, and only to a percentage upon the face value of those, and the only way in which these capitalists ever put in the stock is merely so that it shall not be a matter of annoyance in case they buy the bonds, and everything that was necessary to the security of the lender, as far as the bonds were concerned, was shown then, to wit, the articles of association, the right of way of the road, and the recorded mortgage, and the fact that the bonds were issued and already pledged.

1486 Q. I notice in the contract, of which you have presented a copy this morning as part of your evidence, between Drexel, Morgan & Co., marked "Complainant's Exhibit 3," [at] the beginning of the 7th paragraph, the following: "Henry Crawford hereby covenants that he has control of the Chicago and Great Southern Railway Company and its capital stock, and of the bonds secured by the mortgage to John C. New." Was that in accordance with the assurance that you had previously given to Drexel, Morgan & Co. before the contract was made?

A. I presume it was, and was the fact. You will see by an earlier part of that that the contract provides that I am to put up with them exactly the same security that Dull had, and had in possession, and also it goes on that I am not only to do that but from time to time, if any more stock or any more bonds are issued, then that they shall be put up.

Q. I notice in the contract of December 26, 1884, a provision in substance to the effect that you will procure your construction contract to be cancelled. Now, do you know from whom it was that Col. Spooner, who wrote that contract as you say, got his information?

A. I do not; I was not in a state of mind about that time to take any particular note or have much interest in what was done; as I said, I was rather a passive instrument than otherwise, and I knew Col. Spooner was said to have prepared these papers and I executed them; I haven't looked at them since; I did not look at them very closely when they were presented to me.

1487 Q. Did you have any interview with Col. Spooner when he was here?

A. I think none, except after the papers were drafted; that is my best impression.

Q. Do you know where he got his information to the effect that you were to waive all your right to the income mortgage bonds?

A. I do not.

Q. Isn't it true, Mr. Crawford, that Mr. Nickerson and Mr. Gage and Mr. Porter, or one of them, did know prior to the time of the execution of that contract substantially how and in what manner you had acquired the possession of these bonds and stocks, namely, through this construction contract?

A. I cannot answer, of course, Colonel, what they knew or what they did not know.

Q. I mean from your general knowledge?

A. I am very positive, very positive in my recollection that they never had my construction contract or a copy of it, and never saw the record-book, as far as my knowledge goes. It may be possible that in some kind of a general way I may have stated to them what the purport of the contract was—what I was to be paid.

Q. They knew—that is, Porter, Nickerson, and Gage, knew—your relations to the company, didn't they; that is to say, that you were practically in control of it?

A. At what point of time?

Q. Prior to the 26th of December, 1884.

A. I don't know only except as I was the man that was
1488 actually in control of it. I presume they may have mentally
assumed that I was, and simply from the fact that I was. I told them, Colonel, frankly that Drexel, Morgan & Co. had all the securities in hypothecation, and those securities were described in the second lien which I gave to the bank; therefore, in a general way, they knew that when I made that pledge to the bank that I pledged them all of the stock which I owned in the Chicago and Great Southern Railway Company and all of the bonds which were issued.

Q. Do you know or have you any information as to whether Drexel, Morgan & Co. retained your notes from the 20th of August down to January, 1885?

A. I only know as I gather it from the circumstances; I have understood that when the loan was actually paid off on the 15th of January—I mean by that the money was actually paid—that my cancelled notes were sent back to Mr. Porter and I got them from Mr. Porter.

Q. At about what time?

A. I presume naturally Drexel, Morgan & Co., selling on time to Nickerson and Porter—that is, giving them an option to pay on or before the 15th of January—held everything until they did get their pay; that is the way bankers generally do.

Q. That is your understanding of that matter, isn't it, that they retained those notes until they were finally sent on here with the bonds?

A. I so understand it.

Q. Why are you so positive, Mr. Crawford, that you never
1489 gave George W. McDonald any letter of instructions with
reference to the meeting of February 13, 1884?

A. Simply by a mental process that I very rarely give a man a letter of instructions when I can speak to him; and it would be a very foolish thing for me to turn in and write out a letter of instructions with regard to a matter if I had any instructions to give to a man in my presence, and it is not my habit of doing business, and I am perfectly clear, as clear as I am of any event within the range of memory, that he is utterly mistaken.

Q. Do you remember what the fact was as to whether you told him exactly what you wanted to have done by the board of directors?

A. I have a pretty distinct recollection to the effect that I told not only him but others that were there that the road was just about commenced, and that I was going to make an effort to make a disposition of the securities, and that I had been talking with some bond brokers here in Chicago who were going to try to sell the securities, and I wanted the amount that I was entitled to under the contract formally voted to me, so that I could make a basis for the negotiation of the securities, and I drew up, my recollection of it is, the very resolutions that were there. It didn't need any letter of instructions beyond the form of the resolution, and I am pretty clear that I drew up myself, and said that by the computation under the contract that was what I was entitled to, and that was just what I was entitled to.

Q. You mean the resolutions as they were afterwards
1490 spread upon the records?

A. Yes, sir.

Q. So that it may have been these resolutions that he got confused with the letter of instructions?

A. As far as that is concerned, I have no doubt but what I either actually drew them out or indicated the substance and pith of them; but as far as writing any letter of instructions outside of that, why that is all a mistake. You see that matter was a mere formal matter, because the contract settled it; that is, if there be a contract it settled how much I was entitled to by a mere matter of computation; and it was doubly formal for the reason that the company was not in a position to give me a dollar of anything voted there unless I cleared up the Drexel, Morgan & Co. matter.

Q. After the 20th of August and prior to the 26th of December, 1884, isn't it true that you insisted to the First National Bank people that they should give up their securities that they then held, and which you have described this morning as a part of this final arrangement?

A. No, sir; there was no question of insistance at all; my recollection of the matter is that the insistance was upon their part, that I should give up all my coal property, and I was in a position where I could not say nay.

Q. This was the situation, was it not, after the contract of June 25, 1884, Drexel, Morgan & Co. had certain securities which had
been pledged with them in January, 1883, and in accordance
1491 with your contract entered into on the 25th of June, with
Drexel, Morgan & Co., you subsequently and some time in
August, 1884, put up additional security with them, as specified in the contract and in their letters, isn't that so?

A. I don't understand that I put up any additional security at all. I understand that by putting up the $1,200,000 of stock of the Chicago and Great Southern with them, and the $200,000 additional bonds, I was simply putting up the identical security which was provided by the original contract, because you will see that it expressly requires that if any other stock or bonds are issued that they have got to go up, too; and it was simply a question as to whether the property that was worth less than the securities which they had already up should be represented by those or by the larger amount. They simply wanted to tie me up and tie everybody up, so that when they sold out the stuff which they had in collaterals that it would be selling out everything on earth that represented that company.

Q. That property?

A. That property. It was immaterial whether it was a million of bonds or whether it was a million two hundred thousand.

Q. At the time you put up that additional security or that security you had given up all hope at that time—in August—of being able to consummate the other arrangement and make a sale of the securities, had you not?

A. No, sir; I had not given up all hope. I tried very hard even after that time, because Mr. Nickerson and Mr. Porter were 1492 both disinclined to go into this matter, and clear down to the execution of that very contract they urged and urged and urged me to see whether I could not make some arrangement by which I could turn in and pay back the money which they had obligated themselves to pay and relieve them of the transaction, and I tried long after that; I made personal appeals to my friends to come in and help me.

Q. Down to the 26th of December?

A. Down until the time the receiver was appointed, when I gave up all hope; clear down until then. I was in New York nearly the whole time between August and the very last of October engaged in no other business.

Q. It was not simply the appointment of the receiver that broke up all hope?

A. Yes, it was substantially; that was it.

Q. Didn't you yourself originate that matter?

A. I say I felt then that the thing was in such shape that it could not go on any further.

Q. That is to say, the circumstances which existed at the time of the appointment of a receiver?

A. That is about what I mean.

Q. And after that time you made no effort?

A. I did not; not after that time.

Q. Didn't the First National Bank hold some additional securities other than those mentioned in the contract?

A. They did not, sir.

1493 Q. Didn't they hold a mortgage on some property in Ohio?

A. No, sir.

Q. Were none of the subsidies due to the Chicago and Indianapolis Air Line road hypothecated with them?

A. No, sir.

Q. Simply these securities that are named?

A. That is all.

Q. And those securities—it is part of the arrangement, I suppose, that in consideration that the bank, or in consideration that you made the contract of December 26th, and the assignment of the same date to the bank of your interest therein in that contract, that the bank surrendered to you those securities? Wasn't that substantially the case?

A. My recollection of that transaction is this: that shortly before that time Mr. Nickerson sent for me to come to the bank and told me that he and Mr. Porter had agreed as to the method that the bank should be protected in its second lien, and he stated to me that Mr. Porter was unwilling to allow more than the price of $750,000 for not only the stuff which he had bought of Drexel, Morgan & Co., but for the whole road absolutely, free of all liens, and with a perfect right of way, and with my entire coal property put in as a gratuity, and that if I would agree to put in my coal property so that the bank could conclude the arrangement with Porter, that the bank would surrender to me the existing collateral which they had against my obligations. They put me in the fix then of personally guaranteeing, whatever my personal responsibility is, and also guaranteeing to the extent of the property that I con-1494 sidered to be worth at least a hundred thousand dollars, the arrangement which the bank had made for its protection with Mr. Porter, and, as I explained before, I was in a condition at that time that was not desirable. I knew that my securities had been sold out under the Drexel, Morgan & Co. pledge, and I was left open to a judgment note which the bank had against me, or judgment notes, to the amount of nearly $300,000, and I was not fixed for formidable argument.

Q. Do you remember the month in which you told Mr. Chisholm of the Cleveland Rolling Mill Company, in the office of Drexel, Morgan & Co., what you were doing with them—negotiating a loan?

A. It was either in December—I think it was in December, 1882. I know it was when my negotiations were pending with Drexel, Morgan & Co., and they culminated on the 3d day of January. I know very well I spent New Year's backwards and forwards between Philadelphia and New York to get the thing done, so I think it must have been in December, 1882.

Q. I understood you to say on your direct examination that between the 25th of June and the 20th of August, 1884, you had practically given up all hope of making a negotiation of these bonds; you mean after the Porter contract, do you?

A. No; you are in error. I don't think I stated that. What I said was that I was unable to consummate an arrangement that was then pending and in writing, but I did not use the expression 1495 as broadly as you put it there, that I had given up all hope, for the fact about it is that after August, and after the sale made by Drexel, Morgan & Co., I still remained in New York trying to make arrangements among my friends there for an advance of money that would clear up the matter, because Mr. Nickerson and Mr. Porter both said they did not want to go into the thing; they didn't want any more responsibility and were very anxious that I should find some one that would advance the money to relieve them, and I acted upon that, I think, Colonel, until just before the very last of October, when I returned home and found that the creditors were beginning to threaten or make levies, and that times were getting worse instead of better, apparently. I can't say that I abandoned all hope until very nearly that time.

Q. Do you know whether Mr. Jewett made a condition in negotiating the Dull matter in New York with you that you should, among other things, impound the record-book with him—the record-book of the company—or let him see it?

A. I don't think he made it any condition. I think it was freely stated on my part that I would allow him to see the record-book, and in accordance with that my impression is that when I returned from New York, after the Dull hypothecation was made, that I showed him the record-book and from time to time as it was required, for the purpose of making entries—I think that it was sent or over to Mr. Jewett's office, and passed backwards and forwards between the offices.

Q. Do you remember whether Mr. Cuyler, who Mr. Jewett 496 testified was examining into the affairs of this company for Jesup, Paton & Co., with reference to their making some loan or taking some interest in these securities, made any requirement upon you for the production of the record-book?

A. My recollection of that is this: I had sold to Jesup, Paton & Co. all of the bonds, amounting to over a million of dollars, on the Air Line road, and I wanted Mr. Jesup either to take an interest with me in the construction of this Great Southern road or take some securities or make a loan on them. He thought of the matter rather favorably at first, and in 1882—the date I have forgotten, but I think it was in the summer time, pleasant weather—he sent out here a sort of general utility man which he has for such examinations. He went out over the line of the road, beginning at Fair Oaks and going clear through to Brazil, going over the finished part of the line, and also the unfinished part; and with him was Mr. Vietch, who was then president of the Louisville, New Albany and Chicago Railroad Company. He went over the line also at the wish of Mr. Jesup. At that time Mr. Jesup's expectation was that the New Albany road would make a traffic guaranty of these bonds, the connection being at Fair Oaks with that company. Mr. Jesup also said that he would have Mr. Cuyler come out here from Philadelphia to examine into the legal matters. I think I got a letter from Mr. Cuyler stating that he was to be at the Grand Pacific Hotel in the evening, and wanted to make just as quick 497 despatch of what he had to do as could be done. Knowing that Mr. Jewett was familiar with the Block Coal road matter, and also, to a certain extent, with the Great Southern, my impression is that I took the record-book and met, by appointment with Mr. Jewett, Mr. Cuyler, and we spent an hour in his rooms at the Grand Pacific Hotel one evening over that subject; and I think Mr. Cuyler went away on the ten o'clock train that night; and that was his whole connection with the matter.

Q. The facts as they existed, your relations to the company, your control of the affairs of the company, your sole pecuniary interest in the company, as you understood it, were never a matter of concealment, were they, Mr. Crawford, from June, 1881, until the 26th of December, 1884?

A. I never concealed anything that I am aware of that anybody that had a right to inquire or a right to know ever asked me about the matter.

Q. It was generally understood amongst those who did have a

that Mr. Porter was unwilling to allow more than the price of $750,000 for not only the stuff which he had bought of Drexel, Morgan & Co., but for the whole road absolutely, free of all liens, and with a perfect right of way, and with my entire coal property put in as a gratuity, and that if I would agree to put in my coal property, so that the bank could conclude the arrangement with Porter, that the bank would surrender to me the existing collateral which they had against my obligations. They put me in the fix then of personally guaranteeing, whatever my personal responsibility is, and also guaranteeing to the extent of the property that I con-
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1495 as broadly as you put it there, that I had given up all hope, for the fact about it is that after August, and after the sale made by Drexel, Morgan & Co., I still remained in New York trying to make arrangements among my friends there for an advance of money that would clear up the matter, because Mr. Nickerson and Mr. Porter both said they did not want to go into the thing; they didn't want any more responsibility and were very anxious that I should find some one that would advance the money to relieve them, and I acted upon that, I think, Colonel, until just before the very last of October, when I returned home and found that the creditors were beginning to threaten or make levies, and that times were getting worse instead of better, apparently. I can't say that I abandoned all hope until very nearly that time.

Q. Do you know whether Mr. Jewett made a condition in negotiating the Dull matter in New York with you that you should, among other things, impound the record-book with him—the record-book of the company—or let him see it?

A. I don't think he made it any condition. I think it was freely stated on my part that I would allow him to see the record-book, and in accordance with that my impression is that when I returned from New York, after the Dull hypothecation was made, that I showed him the record-book and from time to time as it was required, for the purpose of making entries—I think that it was sent for over to Mr. Jewett's office, and passed backwards and forwards between the offices.

1496 Q. Do you remember whether Mr. Cuyler, who Mr. Jewett testified was examining into the affairs of this company for Jesup, Paton & Co., with reference to their making some loan or taking some interest in these securities, made any requirement upon you for the production of the record-book?

A. My recollection of that is this: I had sold to Jesup, Paton & Co. all of the bonds, amounting to over a million of dollars, on the Air Line road, and I wanted Mr. Jesup either to take an interest with me in the construction of this Great Southern road or take some securities or make a loan on them. He thought of the matter rather favorably at first, and in 1882—the date I have forgotten, but I think it was in the summer time, pleasant weather—he sent out here a sort of general utility man which he has for such examinations. He went out over the line of the road, beginning at Fair Oaks and going clear through to Brazil, going over the finished part of the line, and also the unfinished part; and with him was Mr. Vietch, who was then president of the Louisville, New Albany and Chicago Railroad Company. He went over the line also at the wish of Mr. Jesup. At that time Mr. Jesup's expectation was that the New Albany road would make a traffic guaranty of these bonds, the connection being at Fair Oaks with that company. Mr. Jesup also said that he would have Mr. Cuyler come out here from Philadelphia to examine into the legal matters. I think I got a letter from Mr. Cuyler stating that he was to be at the Grand Pacific Hotel in the evening, and wanted to make just as quick 1497 despatch of what he had to do as could be done. Knowing that Mr. Jewett was familiar with the Block Coal road matter, and also, to a certain extent, with the Great Southern, my impression is that I took the record-book and met, by appointment with Mr. Jewett, Mr. Cuyler, and we spent an hour in his rooms at the Grand Pacific Hotel one evening over that subject; and I think Mr. Cuyler went away on the ten o'clock train that night; and that was his whole connection with the matter.

Q. The facts as they existed, your relations to the company, your control of the affairs of the company, your sole pecuniary interest in the company, as you understood it, were never a matter of concealment, were they, Mr. Crawford, from June, 1881, until the 26th of December, 1884?

A. I never concealed anything that I am aware of that anybody that had a right to inquire or a right to know ever asked me about the matter.

Q. It was generally understood amongst those who did have a right to inquire or a right to know what your relations were with the company, as I understood you?

A. Well, of course I cannot answer that question as to other people's understanding. I listened to Mr. Irwin the other day here, and he stated that everybody understood that I was president and contractor. You heard Mr. Peters here yesterday; he didn't know whether I was contractor or not, and he didn't know whether people
generally knew that I was contractor or not. Therefore I am
1498 not able to candidly answer your question as to what the
people understood. I think people understood, in a general kind of a way, that I was the responsible monetary head of that concern, whatever my interest was—whether it was absolutely the whole thing or the control of the thing. Naturally they would, because everybody knew that outside of the money that the townships put in—and very few people knew that; the general creditors, I presume, didn't know anything about it—that the townships had furnished any money—I don't presume that any creditor knew anything to the contrary, except that the man to look to for all money in the concern was myself.

Q. Wasn't it known, from your general knowledge of the situation, or talks with Mr. Porter, Mr. Nickerson, and Mr. Gage, or the members of the firm of Drexel, Morgan & Co., with whom you did talk, that they knew, prior to the time that they made any contract with you, substantially what relations you bore to this concern?

A. I don't think, as far as anything that is in your mind, what I judge by the question, to wit, that they knew that what you call my contract was, in your legal parlance, constructively fraudulent. I don't think that they had the slightest knowledge on earth of any such thing as that, or suspicion.

Q. Not that it was fraudulent, but that you practically had control of the corporation, and had got the bonds, and had got the stock, by virtue of your relations to the company, through a construction contract?

1499 A. No; I don't believe they knew, Colonel, to that extent.

Q. You don't remember of their ever having inquired?

A. I do not; no, sir.

Q. You can say, then, if they ever did ask you, you told them truthfully?

A. I did; I don't think any man can say that in my connection with that matter, who came to me to ask me, that I did not state to him the fact as it really existed.

Q. It was generally understood during the time you were connected with the road, at least from the early part of 1882 down, that it was your road—that is, in that sense—when you want to designate a railroad by the principal man connected with it?

A. Yes, sir; they called this my road, just as they call the Effingham road down there John B. Lyon's road.

Q. Just the same?

A. I presume that it is a mere figure of speech; as I have said, and have no disposition to retreat from the responsibility of saying it, every man knew that my money had gone into that concern; that when I took hold of it it was not anything, and that by some means or other I had produced eighty miles of completed road there practically.

Q. And that by some means or other you had all of the bonds and stock, or at least had been the means of hypothecating those bonds and stock for the obligations of the road?

A. They didn't know, a great many of them, that I had the bonds and stock; nobody knew that from the time Mr. Dull first took them, and that was before I had the construction contract; everybody then knew the facts just exactly as they were, that
1500 Drexel, Morgan & Co. knew that Dull had under an existing
hypothecation a million dollars of bonds and all of the stock. Mr. Porter knew, and Mr. Gage knew, and Mr. Nickerson knew, that Drexel, Morgan & Co. had a million of bonds and all of the stock in hypothecation for $350,000.

Q. And they also knew that those bonds originally came from the company through you, did they not?

A. I don't think that they did; I don't know exactly why they should; that they came to the company through me, as far as that is concerned, in one sense it is not a fact, Colonel. Mr. Dull's getting the bonds was not through me at all, except as I literally executed the orders of President William Foster and before I was a contractor, and that original status has never been changed. That original Dull obligation was never paid off until Mr. Porter paid it off by sale.

Q. You had not, at the time these bonds were given to Dull, on the 27th of January, 1882, consolidated the Block Coal road with the Chicago and Great Southern, had you?

A. No, sir; I had not.

Q. Then, at that time Mr. Dull had your note for the purchase price of the road, and the road was yours—that is, the stock representing the road—wasn't it?

A. No, sir; as I have explained to you, at that time I had transferred my right to the stock to the Chicago and Great Southern Railway Company.

Q. By what instrument?

1501 A. By an instrument in writing which I delivered to Mr. Foster, and which he refers to in his paper there. He had instructed me in order to prevent that thing being cut off, because the Indiana and Chicago railway was not worth $500 a mile without that Southern property there that would carry it down into the coal fields. He instructed me to pledge the million of bonds with Dull to protect the balance of the purchase. I did that, and I also pledged my own private stock; every dollar of it. That is all in that Foster memorandum, except that I did more than *that* required of me, because I pledged my own individual property in addition to that, and from that hour to this, Colonel Cooper, I have never had possession of a dollar of stock or a dollar of bonds of the Chicago and Great Southern Railway Company, except that I acted as the bearer of the stock between Mr. Lacey, as secretary of the company, and Drexel, Morgan & Co., to whom it belonged.

Q. What I am asking about is this, not as to what Mr. Foster told you about it, or agreed with you should be done, but as to whether, on the 27th day of February, 1882, you had made an assignment of this purchase of the stock which was then in the hands of Dull as collateral security to your note to the Chicago and Great Southern railway?

A. I had.

Q. Where is the paper?

A. I say I don't know where the paper is. I delivered a written assignment of my right to that stock to Mr. William Foster, president, and you see he alludes to it in the first clause of that paper.

1502 Q. That contract had absolutely been made prior to the 27th of January?

A. It had.

Q. Mr. Porter and Mr. Nickerson knew, did they not, or had seen the contract that you had with Drexel, Morgan & Co. prior to their entering into the contract of the 25th of June, 1884; isn't that true?

A. As a matter of memory, I should state that I don't think they had seen the paper—the copy of the contract. I had not any original, as I have stated, but I don't think they had ever seen my copy, but I had stated to them in general terms that I had borrowed $350,000 of Drexel, Morgan & Co., and this stuff was up as collateral to it.

Q. They knew, did they not, namely, Mr. Nickerson and Mr. Porter, that you had with Drexel, Morgan & Co. the bonds and stock of this company as collateral security to your note?

A. I guess they did; of course they did.

Q. Did the question ever come up between you and them as to how and in what manner you had obtained those bonds and stock? I ask this question with reference to this: From your former relations with the bank, all the time you were building the Air Line road, and your conversations with Mr. Nickerson and Mr. Gage, whether you would say your judgment is not, from all the circumstances, that Mr. Nickerson and Mr. Gage, or Mr. Porter, either of them, knew for what or how you got those bonds from the company?

A. I don't think that the question as to how I got the bonds was ever the subject of any special talk or information between

1503 us. My impression is that I showed — to Mr. Gage, when I made the second hypothecation to him. I made by that *made* the first pledge to him of a second lien——

Q. On the bonds?

A. On the bonds—a copy in print of the mortgage to Mr. New, and a legal opinion, or a copy of the legal opinion by John C. Bullitt, and by Draper, Hoard & Hendricks, of Indianapolis, that they had examined the matter, and that the mortgage was legal and constituted a valid first lien on the property. I don't think outside of that they ever asked me for anything, or I made any statement to them of the precise method that I became the owner or holder of these bonds.

Q. They did understand, did they not—that is, Drexel, Morgan & Co., did—prior to January, 1883, that you claimed to own all the stock of the corporation?

A. No; I don't think that they understood that I claimed to own all the stock of the corporation, for I think at that time there was some township stock that had been issued.

Q. Well, I except that.

A. I don't know whether I stated to them that I owned all, or whether I owned the control. The question, Colonel, of the stock of that corporation has never cut any figure. It never was considered of any value in and of itself, and would not naturally be the subject of much talk or information.

1504 Q. It was quite important, was it not, for them, as long as they were seeking the hypothecation of those securities, which represented the entire property, to have entire control of all the stock as well as of the bonds?

A. Of all that I had certainly, yes, and that *that* all should be a control.

Q. So they did understand that you were in control of the corporation through a majority of the stock?

A. I don't know what you mean by control of the corporation.

Q. I mean this: That you held the majority of the stock of the company.

A. Yes, sir; I have no noubt but what they knew that; I have no doubt but what I told them that.

Q. Have you any doubt that Mr. Porter and Mr. Nickerson, each of them, prior to the 25th of June, 1884, knew the same thing?

A. That I owned a majority of the stock of the corporation?

Q. Yes.

A. Well, that is a mental process on my part. I should think that they naturally would know that I owned a majority of the stock.

Q. Prior to the 25th of June, and after Mr. Porter dropped his further investigation into the affairs of the Chicago and Great Southern, subsequent to his trip down over the road in the early part of 1884, did you have any negotiation at all with Mr. Porter?

A. Not at all.

Q. You did not see him about this matter?

A. No, sir.

Q. You didn't talk with him?

A. No, sir; he just dropped it absolutely, and notified me that it was all over and ended, and that neither he nor any of the people that went down there would take it up.

1505 Q. Didn't Mr. Porter and Mr. Nickerson enter into the arrangement of the 25th of June, 1884, with your consent and concurrence, and by your procurement partially?

A. I have already stated the arrangement which they made with Drexel, Morgan & Co. I have never to this hour seen.

Q. I understand that.

A. The general arrangement by which Mr. Nickerson and Mr. Porter were to become personally obligated to pay my debts there at the bank, or, in other words, to buy the securities at the adjourned sale, was, of course, made by the consent, although I don't think I ever saw Mr. Porter personally before the 25th day of June, when he made it, on the subject; but I saw Mr. Gage, and told him the situation, and Mr. Gage, with the desire to protect the bank's second lien, told me that he would see Mr. Porter, and then that Mr. Porter would communicate with Mr. Nickerson. My impression is that I was in New York nearly all the time, and Mr. Gage sent Mr. Blennerhassett there, and he acted as a kind of go-between, between Mr. Porter and Mr. Nickerson, and he made the negotiation with Drexel, Morgan & Co., and the contract, and which as I say I never saw.

Q. You knew what it was?

A. No, I did not, begging your pardon for being too abrupt there; I didn't know what it was, except that I was assured in a general way that they had bound themselves to buy the securities at the sale, if they would adjourn it. I simply assumed that from the fact that that was the condition on which alone Drexel, Morgan & Co. would adjourn the sale; and they did adjourn it, and it is recited 1506 in my contract that Mr. Nickerson and Mr. Porter had made that agreement. But what I mean is that I never have seen the contract which they executed as between Drexel, Morgan & Co. and themselves, and haven't seen it to this day. Mr. Blennerhassett negotiated that, as it were, around my back, for some reason or other, and I didn't know, as I state, what was going on.

Q. You knew this, did you not, that you had until the 20th of August, 1884, in which to pay up?

A. Undoubtedly,

Q. When the 20th of August came and went, didn't you make some inquiry as to what had become of your obligation there?

A. I knew that I had not paid, and I knew that they sold.

Q. Who told you that?

A. I think Drexel, Morgan & Co. told it, but, as a matter of course, I am lawyer enough to know what would take place on such an occasion as that.

Q. Did you make any effort to get up your notes?

A. How do you mean?

Q. Of course if these people, Porter and Nickerson, had paid off this indebtedness to Drexel, Morgan & Co., then of course your indebtedness was paid?

A. I knew by my contract and the general talk with Mr. Blennerhassett that Mr. Nickerson and Mr. Porter had until the 15th of January to make the payment, and I, being a pretty persistent man, and probably over sanguine, was remaining in New York, hoping against hope, from August clear down to the last of October, to make some other money arrangement by which I could still clear 1507 up the matter, because Mr. Nickerson, when I saw him in New York in June, had urged me, no matter what occurred, to keep on and see whether I could not make a negotiation, because he was extremely averse to having anything to do with it, or putting any fresh money into it. And, acting on that line, I kept on long after August, knowing very well that if I had been able to have come forward with some friends and said, "Here, I will take up the amount of money that you have obligated yourself for," and made some fresh deal with regard to the bank's second lien which they would have been willing to do, that I still had a chance to get something out of the wreck.

Q. Was it understood between you and Mr. Nickerson that if you could find somebody to relieve Nickerson and Porter from their personal obligation to pay this money, that then the bank would waive its second lien?

A. No, that was never agreed, but that the bank would do something in the way of making an arrangement, and would help make an arrangement, by which the Drexel, Morgan & Co. matter could be cleared up, and that if the people would advance enough money to pay up all the debts and keep on, that the bank would hold up awhile. There was a constant indisposition on the part of Mr. Porter or Mr. Nickerson to have anything to do with it if they could possibly keep out of it.

Q. About how much of the money represented in the indebtedness to the bank, Mr. Crawford, went into this road, as near as you 1508 can remember? You say about two-thirds went into the Air Line, and then a considerable portion went into this; how much of the other one-third went into this road?

A. My impression is, nearly all of it. For instance, take what I borrowed on the bonds, which I borrowed from Mr. Shumway; every dollar of that went into the Great Southern. They loaned me once or twice possibly as a kindness, although banks probably are not very kind, but they knew then that the collateral that they had there was not anything like the amount of that debt, and I think they were disposed to nurse me, hoping I would be able to pull through the Great Southern matter, and put them in just that much better fix. I want right here to state in my own justification a matter that has not been brought out yet of this kind: The very idea which I had in making the Drexel, Morgan & Co. loan was to push this thing through to connect the line physically at Attica, and pay up every dollar of construction debt that the thing owed on earth. And I made a calculation that the amount of money that I would personally put in, and what I could get of Drexel, Morgan & Co. would do that. In the first place I had a disaster in the spring of 1884 by the wreck of two piers in the Wabash bridge. That did two things that were very serious to me. In the first place it cost about $10,000 additonal money to replace, and in the next thing it delayed the work so that two things happened to me that were exceedingly disastrous. In the first place, two townships down in Fountain county refused to respond to donations amounting to 1509 somewhere about $40,000, simply because the road had not been connected by the date; and in the second place, it delayed the construction of the line to such an extent that I was not able to comply with the conditions of the Drexel, Morgan & Co. contract by a given date, and they would not let me have the last

$50,000 that I had relied upon to clear up the balance of the Cleveland Rolling Mill Company debt, and the Bessemer Steel Company, and all the others. And if you come to figure up, not including interest that has accumulated since, the construction debts that are now put in in this case, they won't amount, I don't think, to any more than the plus of the $50,000 that I expected to get from Drexel, Morgan & Co. and those donations.

Mr. **Butler**: And the extra $10,000 on the bridge?

A. Yes, sir.

Mr. **Gardner**: Those notes were delivered up to you in January, when they were sent on from Drexel, Morgan & Co.?

A. Yes, sir.

Q. And canceled, were they not?

A. Yes; but my expectation was to get $400,000 there, from that quarter, and instead of that I only got $350,000. My expectation was to get donations to the amount of nearly $40,000 from Fountain county and I did not get a cent.

Col. **Cooper**: Mr. Porter, as I understand, has testified here that among other things that induced him to go into this matter was consideration for you; do you remember whether that
1510 was one of the things that he stated to you?

A. Well, Mr. Porter has always expressed friendly feelings, but I presume on a question of business a man has got to make a bargain for himself, and he makes the best bargain he can, generally. I will state this for Mr. Porter, I know he went into this thing with a good deal of reluctance. I offered him what I thought was a very enticing offer early in the spring of 1884 to go in and have a lot of gentlemen take a controlling interest in the matter and relieve me of the load, and let all the money I had in the project remain in it until it was ultimately worked out. The difficulty about the matter, Colonel, was that it was a project that required a vast deal more new money in order to make it self-supporting. The line as it is from Fair Oaks down to Yeddo, left alone, never would pay expenses, because it does not reach any important country or important towns, and has no important connections and no business that is adjacent to it. Outside of the coal business which is furnished there by the coal property that I owned the earnings were not enough to—would not be enough, as demonstrated by the receivership—to half pay the operating expenses..

The signature of the witness to above deposition was waived by agreement of counsel.

Adjourned to Wednesday, November 25th, at 11 o'clock a. m.

1511 WEDNESDAY, *November 52th*, 1885.

Parties met, pursuant to adjournment, at 11 o'clock a. m.
Present: Same as before.

CEPHAS ATKINSON, one of the defendants, called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

The witness is examined by Mr. HENRY CRAWFORD:

Q. Mr. Witness, please state your name, residence, and occupation.

A. My name is Cephas Atkinson; I live in Benton county, Indiana; I am a farmer and stock-grower.

Q. Are you one of the defendants in this action?

A. Yes, sir; I suppose I am.

Q. Are you the same Cephas Atkinson who filed an affidavit in this cause or swore to an answer on the 4th day of August, 1885, in Benton county?

A. I expect I am; I am the only Cephas Atkinson.

Q. You remember of making oath to a paper to be filed in this cause, do you?

A. Yes, sir; I think so.

Q. Before whom did you make that affidavit; do you remember?

A. I think it was Simon Carter.

Q. In Oxford?

A. No; in Fowler; I ain't certain that it was Carter. If it was not it might have been some of the firm of Carter.

1512 Q. It was in Fowler, was it?

A. Yes, sir; I think it was.

Q. The county seat of Benton county, where you live?

A. Yes, sir.

Q. Did you go there for the purpose of making that affidavit?

A. Yes; I was there at that time; I don't know that I went on purpose, but I was there at the time I did that; I probably might have had other business, but I was there at that time.

Q. You went up from your home south of Oxford partly for that purpose, did you?

A. I don't recollect anything about that; I was at Fowler, at any rate, and they spoke to me about that, and I did that business the same day that I was there.

Q. Who spoke to you about it?

A. I think it was Mr. Wiley.

Q. Mr. Wiley, the lawyer of Fowler?

A. Yes, sir; I think it was.

Q. Had he ever spoken before that day about it to you?

A. I think he had.

Q. When?

A. Well, I don't recollect; it was some week or ten days, probably, before that.

Q. What did he say to you?

A. I don't recollect just what he said. He was asking me about the stock of the railroad; if I had not some stock in the railroad, and if it would be, or whether it was to be, as private stock or as stock of the township; I don't recollect exactly what questions he asked about that.

Q. Where was the first interview?

1513 A. I think it was probably at Oxford or somewhere around in that neighborhood; probably at Oxford.

Q. Don't you know whether it was or not at Oxford or somewhere else?

A. Well, I think it was right at Oxford or right on the road between where I live and Oxford,

Q. Did he come to your house to see you?

A. No, he didn't come on purpose to see me. I saw him on the road; I met him on the road, I think, as I was going to Oxford.

Q. Wasn't he going down tc your house to see you, and didn't he return and go back to Oxford with you?

A. No, we didn't go back together; we didn't go anywhere together.

Q. Didn't he tell you that he was on his way to see you at your house about this matter?

A. I don't recollect whether he told me he was going to see me directly about that personal matter or not, but he met me and he asked me about this matter, I know.

Q. At that first interview did you employ Mr. Wiley to act for you in any manner whatever in this business?

A. I told him if there was—yes, I just told him this: if there was anything in my stock as an individual that I would have him to collect it for me or act for me in the case.

Q. You mean by your stock as an individual what you were entitled to as tax-payer of the township that had voted aid?

A. Yes, sir.

Q. That is the only stock that you ever had or claimed, isn't it?

A. That is all.

1514 Q. Did you ever make any claim to be a stockholder of the Chicago and Great Southern Railway Company or the Indiana and Chicago Railway Company until that interview with Mr. Wiley about four or five months ago?

Objected to by solicitor for defendants.

A. Yes, sir; I always claimed my rights as a stockholder, because I protested against it from the first.

Q. In what manner did you ever claim your rights as a stockholder?

A. Because I paid my taxes as a stockholder.

Q. Did you ever ask for any certificate of stock of any officer of that company, Mr. Atkinson, in your life?

A. I asked for tax receipts, payable as stock, to that——

Q. I ask you whether you ever asked any officer of either of those railroad companies to issue you a share of stock in any way or at any time?

Objected to by solicitor for defendants.

A. I don't know that I did.

Q. What person did you ever claim to that you were a stockholder of that company or what act did you ever do as a stockholder of that company prior to that interview with Mr. Wiley?

Objected to by solicitor for defendents.

A. I don't know that ever I claimed particularly to any one of the company that I was a stockholder.

Q. Didn't, in substance, Mr. Wiley ask you to allow your name to be used in these legal proceedings because you were a tax-payer of that township, and therefore entitled to stock?

1515 Objected to by solicitor for defendants.

A. I don't know whether he asked me that in that shape or not; I don't recollect. I just told him that if I was entitled to any stock, if it was not township stock and I was entitled to any stock, that I wanted it.

Q. Didn't he tell you in that interview that the court at Indianapolis had decided that it was not township stock?

Objected to by solicitor for defendants.

A. I don't think he did, but it may be that the township trustee did. I know the township trustee and myself talked about it.

Q. I am asking exclusively now about this interview with Mr. Wiley.

A. I don't recollect that he did ask me if it was—I will not say for certain whether he did or did not ask me about the stock.

Q. This interview occurred about five or six months ago, didn't it—not over six months?

A. I think it was more; I think it was about along—just about July; no, the last of July, probably, but I don't recollect about that to the date—that is, to the exact date.

Q. The last of July or the first of August of this year?

A. Yes, sir; last summer.

Q. Have you got an ordinarily good memory, so that you do not forget things that are only five or six months old?

A. No; I have probably an ordinary memory.

Q. Did you hire Mr. Wiley as an attorney to conduct the 1516 defense of this business for you as a stockholder, or didn't he ask you to allow your name to be used? Can't you remember that?

Objected to by solicitor for defendants, on the ground that the witness has already stated what he told Mr. Wiley and what Mr. Wiley told him.

A. I think I told Mr. Wiley that if he could collect anything out of that, that I would not pay no costs in the matter, but if he could collect anything out of it, why, I would give him a per cent. of what he collected, probably.

Q. But under no circumstances were you to pay any fees or costs, were you?

Objected to by solicitor for defendants.

A. I don't think I was to pay any costs unless he maintained the defense—maintained the complaint.
Q. And you haven't paid a cent, have you, up to this time in any of this litigation?
A. No, sir.
Q. Expenses of witnesses or anything else, have you?
A. No, sir; I have not.
Q. You don't expect to, do you?
A. Yes, sir; I have paid some.
Q. What?
A. I have paid my fare here last night.
Q. Outside of that?
A. No, I have not.
Q. Did Mr. Wiley then and there agree that you should not have to pay any costs in this matter?

Objected to by solicitor for defendants.

A. I don't know that he did positively agree that I should not be to no costs or expenses in this matter.
1517 Q. What did he agree to, then?
A. I told him that I would not pay any expenses; I didn't want to be to any expenses.
Q. What did he say in answer to that?

Objected to by solicitor for defendants.

A. I believe he said there would not be any expenses attached to it; little, if any; something of that kind.
Q. When was the next time you saw anybody about this matter; when you went to Fowler to make affidavit to this answer?
A. It was probably along in the last of July when I saw Mr. Wiley, and then probably it was eight or ten days afterwards when I was in Fowler and made affidavit to that—I don't know; let me see that.
Q. This is not the original; this is a copy.
A. Is it a certified copy?
Q. No; it is not certified.
A. I wanted to see whether it was what I testified to or not.
Q. Did you go to Fowler, Mr. Atkinson, at the time you made affidavit to this answer, in pursuance of a request from Mr. Wiley, by letter or otherwise, that you should come there?
A. No, sir; I think not. I think I was in Fowler and saw Mr. Wiley or Mr. Carter, and they spoke about this answer, and I went with them to his office. I don't think I was sent for nor written for by letter; that is my memory now; but I was in Fowler.
Q. When you went there did you find the paper all prepared, or was it prepared after you *go* to the office?

1518 A. Now, sir, I could not tell positively about all that, but my impression is it was, at any rate, a portion of it prepared and I don't know how near all; I would not state.

Q. The only interviews you ever had with Mr. Wiley about the matter were the interview on the road south of Oxford, or at Oxford, and the one at Fowler; is that correct?

A. I think I spoke to him about it just as I was passing by on the street; probably a time or two after that.

Q. I mean prior to this paper being sworn to.

A. I never saw him but once prior to that, I think.

Q. How long did the interview at Oxford last between you and Mr. Wiley about this matter; was it short or long?

A. How long was the interview?

Q. Yes.

A. Well, it was short—tolerably short.

Q. Did you, in that interview, furnish him with any facts to put into this answer with regard to the manner with which this road was constructed or built, or the contracts or bonds, or anything?

Objected to by solicitor for defendants.

A. I don't recollect whether I did or not. I might have stated something about—he might have asked me some question in regard to the construction of it or the building of it.

Q. Didn't he or did he? That is what I want to know.

A. I don't recollect whether he did or not.

Q. You have no memory on that subject?

A. Probably he did ask me some questions about the construction.

1519 Q. What did you say?

A. I don't recollect now what I did say about it.

Q. You don't recollect what he said about that matter?

A. No; I do not; I don't recollect what he did ask me about that.

Q. You don't recollect that he did ask you either, do you?

A. No; I don't recollect positively that he asked me anything about the construction of the road at that time; he was asking me, I think, more particularly about the tax-payers of our township and the payment of the stock, and so on, and he might have asked me something about the construction of the road.

Q. It does not have any impression on your mind if he did say a word on that subject, does it, now?

A. I know one thing he did ask me about was getting some cattle killed on the road.

Q. I am not asking you about any cattle. I am asking you to state whether you said anything to him on the subject of the construction of this road or the construction contracts or bonds or anything.

A. I don't recollect whether he did or not; he might have asked me something in regard to the construction of the road; he might have asked me something about the bonds; I don't know anything about that.

Q. Did you know anything about the bonds then?

A. About the railroad bonds?

Q. About the bonds of this railroad—how many there were, or when they were issued, or anything about them.

A. No; I don't know—I have heard some talk about bonds being issued, but I don't know that we talked about it at that
1520 time; we might have talked about it.

Q. You did not know anything about it to talk about, did you, Mr. Atkinson, you personally?

Objected to by solicitor for defendants.

A. No; nothing about the bonds.

Q. About the bonds of this railroad—how many there were, or when they were issued, or how they were issued, or anything about them, did you?

Objected to by solicitor for defendants.

A. Well, sir, I think he was talking about the cost of the construction of the road; I think he was talking something about that.

Q. What did you say about that?

A. Well, he was asking—I think we talked about what the road, something about what the road, would cost in regard to the grading of it.

Q. Did you say anything to him about what you thought?

A. Well, it is likely that I did.

Q. What did you say?

A. What it would cost to grade the road?

Q. Yes.

A. I don't recollect exactly what I said about it; if I said anything in regard to the grade I said a portion of it would be rather light grading and a part of it would be pretty heavy grading; towards Attica from Oxford north would be generally pretty light grading.

Q. That is all you said to him, is it; you don't know that you said that, do you?

A. We might have had some talk.

1521 Solicitor for defendants objected to the counsel putting double questions to the witness; he should put one question at a time and let the witness answer it.

Q. Do you know that you said that or had a word of that kind of conversation with him on the subject?

A. My impression is there was talk about the grading of the road, or something about the road, about the bonds, and the cost of the road in regard to grading it.

Q. Now, is that all that you remember in that conversation being talked about the road?

A. I don't know whether there was anything more said about it or not; I can't recollect.

Q. Before you made affidavit to this answer did you read over what you were swearing to?

A. I think he read it over; I don't think I did.

Q. You heard it all read then, did you?

A. Well, I don't know that he read every word.

Q. You swore to it, every word, didn't you?

A. I might have sworn to it, to the best of my knowledge, probably; I would not swear to anything positively that I didn't know all about *it*.

Q. Didn't you swear to anything in this paper, as you remember, of your own knowledge?

Solicitor for defendants objected to the question on the ground that the paper shows for itself what it is, and that the original paper that was sworn to is not presented to the witness, and it is not a fair examination to examine him from a pretended copy of it.

1522 Mr. PIERCE: This is not a pretended copy; this is a copy that was filed in court, and was furnished by the gentlemen themselves.

Col. COOPER: I don't know whether it was or not.

Mr. PIERCE: I say it was; I receipted for it to the clerk in Indianapolis, and it was placed on file there for our benefit by counsel on the other side.

Col. COOPER: While I do not question Mr. Pierce's word in this matter at all, yet at the same time the original document is not produced nor a certified copy of it; and that, in my opinion, it is not fair to examine the witness upon a copy of an instrument which he swore to without producing the instrument itself.

Mr. CRAWFORD: Mr. Atkinson, please state now whether, as a matter of recollection on your part of an event that occurred only in August last, you did or did not swear to anything whatever in that answer as absolutely true of your own knowledge?

Objected to by solicitor for defendants.

A. I swore to the paper that Mr. Wiley had; I made affidavit, to the best of my knowledge, that there were some things that I thought were true.

Q. Is that your recollection now as a mere matter of memory of that oath that you took on that day?

A. That is my memory of what my oath was.

Q. You signed your name, didn't you, to a paper?

A. Yes, sir; I think I did.

Q. To what lawyers call a jurat. Let me read to you to 1523 refresh your recollection.

A. I don't know what they call this.

Q. "Cephas Atkinson, being duly sworn, on his oath says that he has heard read the foregoing answer, and is fully informed of the matters and things therein stated; that the matters therein stated on information are true, as he is informed and believes; the matters therein stated of his own knowledge are true. (Signed) Cephas Atkinson." Now, didn't you sign that paper, as it purports to be, upon your answer signed by you, and then make oath to it, as is stated in the record?

Solicitor for defendants objected to the question because the counsel has read as a part of his question from a paper which is not the original paper, as admitted, that the witness signed, and further objected to the question because evidence of this kind is not competent.

A. Whatever was on that paper that I signed why of course was just as I signed it, or I would not have done it.

Q. Then, if it is on the paper that anything in the answer is sworn to by you as true of your own knowledge——

A. I don't think I swore to anything being true of my own knowledge.

Q. Suppose it is that way in the paper which you signed, what have you got to say now as a matter of recollection about your oath on that occasion?

Objected to by solicitor for defendants as incompetent.

A. Whatever I stated in that paper of course I stated it to
1524 be true, as I believed it at that time.

Q. I will repeat the last question to you. (Question read by commissioner.)

A. Well, I ain't got anything to say I would like to see just exactly what it was, word for word, that I testified to; then I could tell.

Q. I will now present you a paper which is a letter-press copy, as I understand it, of the original paper signed and sworn to by you, so that you can thoroughly refresh your recollection.

A. I don't think—I don't recollect at all—that "the matters stated of his own knowledge are true;" I don't recollect of stating that part of it, because there might be matters in there that might be true, as I believed, and there might not be matters in there that was true as I knowed of.

Q. Mr. Atkinson, has any other tax-payer of your township ever requested you before you filed this defense to take this step?

A. Has any one advised me, do you say?

Q. Had any tax-payer of your township in Benton county, before you made affidavit to this answer, ever requested you to make this defense against the legality of the bonds and for the purpose of setting aside a fraudulent construction contract?

A. Before the getting up of that paper?

Q. Before the getting up of this paper.

A. I don't recollect whether there was or not before the getting up of that paper.

Q. Mr. Atkinson, I now call your attention to a statement in this paper sworn to by you. I will read: "And these defendants fur-
1525 ther say that on the 3rd day of August, in the year 1885, they
took from the treasurer of Benton county special receipts which are authorized by the laws of this State, showing the amount of railroad tax paid by them, and on that date presented certain receipts to one C. W. Hillard, who is the treasurer of the Chicago and Great Southern Railway Company—the president and secretary of said company neither of them could be found—and demanded of

him that he issue to them a certificate of shares of capital stock in said railway company to the full amount of the money so paid by them, less the odd sum over and above the amount which might be evenly divided by the sum of fifty, and thereupon exhibited to him the said special receipts issued to them as aforesaid; but he, said Hillard, wholly failed and refused to issue to them the said certificates of stock, or any of them." What do you know about that statement being true or not?

Solicitor for defendants objected to the question, because it is based upon reading from a pretended copy of a document which is not produced.

A. I don't understand who it is that presents the certificates.

Q. I read you just exactly the averment as it is in your answer sworn to. I now ask you what you know personally about those receipts being taken or presented; did you do it?

Solicitor for defendants objected to the question because counsel says that he reads from an answer sworn to by this witness, 1526 and does not present the answer so sworn to by him.

A. I want you to read that again; I don't understand who it was or what receipts it is you are alluding to.

Q. I now hand you the paper purporting to be a copy of your answer furnished by your own counsel. (Paper handed to and examined by witness.)

A. If I understand this, these tax receipts that was paid for this railroad tax, I did authorize Mr. Wiley to get my receipts and the receipts of my brother and my brother's estate as administrator, if that is what is meant.

Q. Is that all the answer you have got to make to my question?

A. If that is the receipt that this speaks of here.

Q. You have the paper there before you, and in that paper you swear that on a certain day you took receipts from the treasurer of Benton county; did you do that personally at all?

A. I don't know whether I took them personally from the treasurer—yes; I took my tax receipts personally from the treasurer of Benton county when I paid my taxes.

Q. I am not asking you about that; you have the paper before you, and you know that is not the question. This allegation is that on the third day of August, 1885, you took special receipts.

Solicitor for defendants objected to the question because counsel states to the witness that he knows that what he states is false, and that it is an improper examination, unfair, irregular, and 1527 contrary to the due course of the examination of witnesses in courts of justice.

Q. I am asking you about special receipts taken on the 3rd day of August, 1885; you did not pay any railroad taxes on that day, did you, Mr. Atkinson?

A. No, sir.

Q. Now, did you on that day take special receipts from the treasurer of Benton county?

A. I don't know whether I took them on that day or not; I did take special receipts from the treasurer of our county.

Q. When?

A. Last summer some time, but I don't recollect the day.

Q. Did you take them personally [or] did he give them to you?

A. Well, I won't say whether he gave them to me personally himself, or whether Mr. Carter gave them to me personally; one or the other of them gave them to me.

Q. Have you got them now?

A. I have not, got them on my person to-day, but I have got them.

Q. You have got them?

A. Yes, sir.

Q. Did you present those special receipts to C. W. Hillard?

A. Myself, no, sir.

Q. Were you present when they were presented?

A. No, sir; I was not.

Q. Do you know that they were, as a matter of fact, ever presented?

A. Well, I did not see them presented; I expect they were presented, but I didn't see them presented.

1528 Q. You stated in your sworn answer that certain individuals, by name Starin, Crawford, Lyon, Worden, Conklin, Lacey, and McDonald, were elected directors of the Chicago and Great Southern Railway Company on a certain date, and those persons were elected and qualified under the promise and agreement to carry out the wishes of Henry Crawford in and about the premises; will you be good enough to state whether you swore to that allegation of your own knowledge?

Solicitor for defendants objected to the question on the ground that it does not appear in this examination that the witness has sworn to any such thing.

A. Well, sir, I don't know; I don't know whether that is an allegation I swore to or not; I don't know whether I did or not.

Q. Do you know anything about it now?

A. No, sir; I do no not.

Q. You don't know whether that statement is true or false, do you?

A. I don't know whether I swore to that statement or not.

Q. Do you know whether that statement, of your own knowledge, is true or false?

Solicitor for defendants objected to the question for the same reason as before.

A. Not from my personal knowledge I do not, but from hearsay I know Mr. Crawford was elected president and those parties directors of the Great Southern railroad, but, of course, I was at no elections; I don't know it personally.

Q. In your answer sworn to by you is the allegation that "On the

18th day of March, 1882, no work had been done on said line of railroad of any value?"

1529 Solicitor for defendants objected to the question on the same ground as before.

A. There was not very much work done in March, 1882.

Q. Were you ever over the road between Oxford and Goodland or any part of it before the 18th of March, 1882?

A. What is the question?

Q. No work had been done upon said line of railroad of any value; you live about a mile and a half from Oxford, don't you?

A. Yes; a mile from Oxford or a mile and a half.

Q. Didn't you know as a matter of fact when you made affidavit to this answer that the rails had been laid and the cars had run from Oxford to Goodland before that date?

Solicitor for defendants objected to the question on the same ground as before.

A. I don't think I have made any such statement that there was no work done on the 15th of March, 1882.

Q. If you did make such a statement in this affidavit what have you to say about that statement now, as to whether it is true or the contrary?

A. There was some work done.

Q. Wasn't there work done to your knowledge so that the rails were laid continuously from Oxford to Goodland and cars had run over it before that date?

A. I would not state; I don't recollect that they had or had not at that date, on the 18th of March, 1882, whatever date it is.

Q. You allege in this answer sworn to by you that on the 18th of March, 1882, "a certain construction contract was entered
1530 into;" had you ever seen that?

Solicitor for defendants objected to the question on the same ground as before.

A. Seen the contract?

Q. Yes.

A. I don't know that I ever did see any contract; I knew about that time that the men and the work and things was changing hands and Mr. Foster and his men left the road.

Q. That is all you know about it, is it?

A. That some other parties took possession of it.

Q. Is that all the information that you had then or have now on the subject?

A. Well, I have seen Mr. Annabal along the road and Foster both, and they told me that they had sold the railroad out, and that Mr. Crawford owned the railroad. I never saw Mr. Crawford in my life yet, without you are the man. I never saw him in my life in person, without you are the man.

Q. I am.

A. I never saw you in my life if you are Mr. Crawford.

Q. You never saw the construction contract?

A. No, sir; I never saw it in writing.

Q. Did anybody ever tell you what it was?

A. I heard Annabal talking about it, and Foster, too, something about the road being turned over to one Mr. Crawford.

Q. Is that all they told you?

A. I don't recollect what all they did say now.

1531 Q. Did you know anything about the amount that was to be paid for the construction of the road before you swore to this paper?

Solicitor for defendants objected to the question on the same ground as before.

A. I don't suppose I knowed anything more about it than what I heard from those parties.

Q. What parties?

A. Crawford and Foster.

Q. You never heard anything from Crawford, did you?

A. Annabal, I mean.

Q. How long before August, 1885, was that?

A. I think it was along in March or April, 1882, somewhere along there.

Q. And that *is* the only thing you knew about a construction contract was, that Annabal and Foster, along about April, 1882, told you that they had sold out the road, and that I was the owner of it; is that it?

A. Something to that amount.

Q. In this answer sworn to by you is this allegation: "The defendants show to the court that the railroad was not built in accordance with the terms and agreement of the contract; the material used in its construction was inferior; the work was slighted; the rails were iron." Did you ever go on that road?

Solicitor for defendants objected to the question on the same ground as before.

A. Yes, sir; I did go over it.

Q. When did you go over the road, and what part of it, Mr. Atkinson?

A. I have often been over through my own farm, and from there to Oxford, and north of Oxford; I have often been along it.

1532 Q. You have been along it?

A. Yes; and on it.

Q. Were you ever over the road?

A. Yes, sir; I have been over it.

Q. When?

A. I have been over it a number of times along in the spring of 1882 and 1883.

Q. What part of it?

A. From Pine Village to Oxford, and from Oxford up towards Goodland, and up to Oakley.

Q. Do you say that you have been over the road from Pine Village to Oxford in 1882?

A. Yes, sir.

Q. In 1882?

A. 1883 and 1882; I have been over the road-bed; they had it graded, and my cattle was over it all summer.

Q. Were you ever over the road all the way—I mean to ride on the railroad, up to Goodland?

A. Yes, sir; I have rode to Goodland.

Q. Were you ever north of Goodland?

A. No, sir; not on the railroad; I have been along——

Q. I am asking about on the railroad.

A. No, sir.

Q. Now, you state that the rails in that road are iron?

A. Yes, sir.

Q. Is that true?

A. Yes, sir.

Q. They are iron through your farm, are they?

A. Yes, sir.

Q. You swear to that?

A. Well, I think they are.

Q. You think they are?

A. Yes; that is, the first rails that were put there.

Q. Through your farm they are iron rails; you swear to that, do you?

A. I swear to the best of my knowledge they are iron rails.

1533 Q. You were never north of Goodland, were you?

A. Not in the train I was not.

Q. Have you ever seen any part of the road north of Goodland?

A. Yes, sir.

Q. Did you examine the rails there to see whether they were iron or steel?

A. No; I did not examine them particularly, no.

Q. You say there were less than three miles of sidings constructed; have you ever measured them?

Objected to by solicitor for defendants.

Q. What do you call sidings?

Objected to by solicitor for defendants.

Q. What do you call sidings? Do you know what sidings are to a railroad?

A. Do you call it fencing; is that what you mean?

Q. Do you think it does mean fencing?

A. I ask you.

Q. Mr. Atkinson, I am not a witness now, and I am examining you as to what you know about this matter. Do you think the meaning of this sentence is that there were less than three miles of fencing constructed; is that your idea of what sidings are of a railroad?

A. I said in there that was constructed of inferior material and not done according to contract; that is what I swore to, isn't it?

Q. Yes.

A. I repeat that.

Q. Did you ever see the contract?

A. Yes—well, no. I have had verbal contracts—yes; seen contracts.

Q. I am asking you whether you ever saw the contract
1534 under which this road was to be built.

A. I saw the Foster contract.

Q. I am asking you whether you ever saw the contract under which this road was *ever* built, that you allege was made with one Henry Crawford.

A. No; I never saw your contract, but I have had contracts from your men, personally myself, and *it* never filled a letter of them, not a letter in no contract they ever made with me.

Q. What part of the material used in the construction of the railroad, to your personal knowledge of railroad building, was inferior?

Objected to by solicitor for defendants.

A. Well, the material used in the bridges right there on my farm was inferior; come very near going down; very nearly going down; the cattle-guards were very inferior; they put up one very inferior.

Q. You state in this answer sworn to by you "That the honest and reasonable cost and expense in constructing the line between Fair Oaks and Attica, exclusive of the bridges over Pine creek and the Wabash river, did not exceed the sum of $5,000 per mile, and it is not worth to exceed that sum.

Objected to by solicitor for defendants on the same ground as before.

A. I don't believe it was worth it at that time.

Q. You read that clause, did you?

A. I did.

Q. It was read to you, I mean.

A. I didn't read that just now.

1535 Q. You remember that clause, do you—that part of it?

A. No; I don't exactly remember it, but if that is in the clause I repeat that.

Q. You know probably about as much of the construction?

A. I am talking about this railroad when it was first built; I am not talking about it now.

Q. You know as much about the road, that part through your farm, as any other part of the road, don't you; about how it was constructed and the cost of it?

A. Yes, sir; I know more about it.

Q. You have seen that, haven't you?

A. Yes, sir; a good many times.

Q. There is a good deal of the balance of the road that you never saw in you life, isn't there?

A. No, sir; not a rod of it.

Q. Have you ever been over the line from Goodland up to Fair Oaks?

A. Not on the train; I have been right along it; I have been riding along it.

Q. Since the road was built?

A. Yes, sir; I have been right across it on a horse.

Q. On the highway?

A. Yes; and driven along it with cattle, and have been along there a good many times when they were building it.

Q. You crossed it at right angles, did you?

A. Yes, sir. I would cross it, generally, and sometimes I would go along it for a ways; it was open prairie country then, the most
part of it; you could go along without any fencing in places.
1536 Q. Did you ever build a railroad before this?
A. No, sir.

Q. Did you ever have any contract with one? I mean with regard to its construction.

A. No, sir; I never had any.

Q. Ever contractor in one?

A. No; I was never a contractor in a road.

Q. How did you acquire your knowledge of what the reasonable cost of building the railroad was?

A. Well, sir, in the first place, I am a practical worker. I have had a good deal of work in grading, a good deal of work in contracting on large ditches, grading roads, and excavating earth in different ways, and in my knowledge of the grading of that road and from the ties that were laid down on it, I would say further that the ties laid down on that road were very inferior, *very inferior*, and the grading was very inferior, at first, and a great deal of light grading.

Q. You have stated now fully all you desire to of the experience you have had that led you to form an opinion about what it cost to build that railroad, have you?

A. In that particular.

Q. Did you know what the value of rails were?

A. No; not exactly. I did not, but I have some knowledge of what rails are worth.

Q. What is that knowledge; did you ever buy any?

A. I have knowledge of what iron is worth.

Q. I am asking you whether you have any knowledge of what steel rails are worth, for instance?

A. No; only the price of iron and steel.
Q. What was the price of steel rails at this time?
1537 A. At this time?
Q. Yes; when this road was built?

A. I stated I did not think there was steel rails on it—that is, where I was acquainted with it.

Q. I ask you what the price of steel rails was about the time this road was being built?

A. I suppose *there* was about, at the time it was built, *about* three and a half cents a pound—may be a little more or less.

Q. What were iron rails worth at this time?

A. They were worth less.

Q. How much less?

A. A cent or a cent and a half a pound less than steel.

Q. Mr. Atkinson, how far does this road run through you?

A. Two miles; a mile and a half on my line and half a mile north. It touches my land for two miles.

Q. What did the right of way cost through your land? What did the company pay you for the right of way through your land?

A. They paid me at the bitter end of a fight for about three years between five and six thousand dollars.

Q. Wasn't it a good deal over six thousand dollars, instead of between five and six?

A. No, sir.

Q. How much was the judgment you got? Wasn't it over six thousand dollars, and wasn't it paid in full, principal and interest?

Solicitor for defendants objected to the question on the ground
1538 that the judgment record itself is the best evidence of that,
and this is a direct examination.

A. I know this, Mr. Crawford, if that is your name, it was never paid according to agreement.

Q. I now repeat the question, whether you did not recover judgment for right of way across your land, which you state is two miles, for over six thousand dollars, and whether that was not paid in full to you, principal and interest?

A. I don't think it is paid in full yet, principal and interest, right square up; it may be very nearly paid.

Q. How much does it lack?

Q. I don't say how much it lacks; I will say I don't think it is paid in full yet; I will say that.

Q. Wasn't the judgment originally for over six thousand dollars?

A. I don't recollect the exact amount of the judgment; it might have been for about six thousand dollars; I don't recollect exactly.

Q. In this answer sworn to by you it is stated that "at the time of making the contract with said Crawford there was a railroad constructed from Attica south to Yeddo, but that it was of little value." Did you ever go over the railroad?

Solicitor for defendants objected to the question on the same ground as before.

Q. Did you ever go over the road southward from Attica to Yeddo?

A. Yes, sir; I have been over that.

Q. On the cars?

A. Yes, sir.

Q. When?

A. I was over [it] last summer.

Q. Before or after this paper was sworn to?

A. Before; I started another time and went as far as At-
1839 tica and would not go any further.

Q. You also state, in the same connection, "that the said Crawford had or could obtain the control of it for a mere nominal consideration;" what knowledge did you have at the time this answer was sworn to by you on that subject, Mr. Atkinson?

Objected to by solicitor for defendants on the same ground as before.

A. I don't know what knowledge I had, only that it was counted. There was no trains run on it at all; they took the trains off of it. I started to go down to Crawfordsville, and went as far as Attica, and they didn't run no further.
Q. When was that?
A. I think it was last spring.
Q. You are speaking now, in this answer, Mr. Atkinson, with regard to transactions occurring in 1882?
A. Oh, no; I ain't.
Q. Begging your pardon, you are.

Objected to by solicitor for defendants.

Q. Let me call your attention to the fact that this paper says: "Defendant further shows that at the time of making the contract with said Crawford there was a railroad constructed from Attica southward to Yeddo."

Solicitor for defendants objected to the question on the same ground as before.

Q. You further also state, in this answer, "that the contract with said Crawford was made on the 18th of March, 1882?"

A. I had been over the ground before that; I had been 1540 over the road a year or two before that; but that probably was before that time.
Q. Had you ever been over the road from Attica to Yeddo?
A. Yes, sir.
Q. Did you know anything about its value?
A. Nothing; only what I heard from others; I didn't know anything personally.
Q. Did you know whether I could obtain control of it for a mere nominal consideration?
A. I know from other parties that had been talking about getting the road that it could be obtained at a low rate; it was not valued for very much.
Q. What parties told you it could be obtained for a low rate?
A. I heard Mr. Foster talking about it.
Q. Did you hear anybody else?
A. I heard Annabel talking about it when he was up to our country.
Q. Is that your authority for making this allegation in here that it could be obtained for a mere nominal consideration, or did you have any other information?

Objected to by solicitor for defendants on the same ground as before.

A. That is the most information, that they valued at a low figure the railroad.

Q. You state, in this answer sworn to by you, that "if a fair and honest report had been made, as the facts were and now are, it would have appeared that the entire line constructed by the said Crawford had not cost him more than $300,000, and the outstanding
1541 indebtedness then and there existing exceeded the $150,000,
which would only leave the sum of about $150,000, which said Crawford had then and there expended in and about the work in constructing said railroad." What information or personal knowledge did you have, Mr. Atkinson, when you made oath to that statement, as to the facts which I have just read to you.

Solicitor for defendants objected to the question on the same ground as before.

A. Well, you state that there was $150,000 expended, I believe. Just read that again.

Q. (Question read by the commissioner.)

A. Well, that there—what information I had of that was just my own information of the cost of over $300,000, because Foster had done a good deal—some of that work, at any rate.

Q. Is that the only answer that you have to make to that question, Mr. Atkinson?

A. Yes; I don't think it would cost more than that after the work that Foster had done, to complete that; I didn't suppose it would; that would be my only——

Q. How much do you think the value of the work that was done by Foster was?

A. Well, Foster graded and tied the road.

Q. How much would you think the value of the work was that was done by Mr. Foster?

A. Well, I could not tell what the value of his work was.

Q. Give us your impression.

A. The grading was, I suppose, worth a thousand or fifteen hundred dollars a mile; I guess he graded it.

1542 Q. You state in this answer that "after said Crawford had procured said bonds and stock he delivered them to Drexel, Morgan & Co., bankers in New York, by way of pledge for an individual loan of money made by them to him, for about the sum of $350,000." What did you know about that?

Solicitor for defendants objected to the question on the same ground as before.

A. I got that information from Annabal at the time they had that trial of yours in Lafayette; he said you was in New York or the East, negotiating those bonds.

Q. What time was that trial?

A. It was during the time of the payment of this judgment of mine; probably it was in 1884.

Q. 1884?

A. Yes, sir.

Q. Annabal told you in 1884, did he, that I was borrowing money of Drexel, Morgan & Co.?

A. You was East; I don't know the purpose particularly, and you was negotiating for money and could not pay those demands or payments as you contracted to be paid.

Q. Did he tell you I was negotiating bonds?

A. He said you was negotiating for money.

Q. You have stated in here distinctly, that I delivered the bonds and stock to Drexel, Morgan & Co., bankers in New York, by way of pledge for an individual loan of money made by them to me for about the sum of $350,000. Now, who told you that?

1543 Objected to by solicitors for defendants on the same ground as before.

A. Annabal told me that, and he told me in court in Lafayette.

Q. In 1884?

A. I won't be certain about that; it was at the time of the payment of this judgment I held against Mr. Crawford for right of way across my place, and he was there, and had issued on the road this judgment—I forget what they call it.

Q. You remember distinctly he told you it was Drexel, Morgan & Co., do you?

A. I think so; he told me in court.

Q. That it was Drexel, Morgan & Co.?

A. I think he did.

Q. And that they were loaning $350,000?

A. That they were loaning an amount of money.

Q. You say here it was $350,000; was that the sum named?

Objected to by solicitor for defendants.

A. Well, I expect it was.

Q. Is that your recollection?

A. That is my recollection, that he was negotiating for—well, I won't say whether it was $350,000 or what it was, but it was a large amount of money.

Q. You state here $350,000, that sum is stated; I want to know where you got it?

A. That is where I got it; that is my recollection.

Q. Did he also state that the bonds and stock of the railroad company had been pledged with them for that loan, as you state here?

Objected to by solicitor for defendants.

A. I expect he did; he was the author of what I stated there.

1544 Q. May not that conversation have been away along in the first part of 1883 instead of 1884?

A. Well, I haven't got no date; I could get the date of that conversation exactly, but I haven't got it.

Q. It was a conversation in which he stated that a loan was being made then, was it?

A. He was trying to negotiate a loan and the officer had stopped the road on it, that day or at that time, on a restraining order or something, for that debt, and he came there in court in Lafayette and made the plea that Mr. Crawford was negotiating a loan or making a loan for a large amount of money—some three or four hundred thousand dollars.

Q. Do you remember whether you suggested any alteration or addition to this paper when you first saw it in the office of Mr. Wiley, at Fowler, and before you made affidavit to it?

Objected to by solicitor for defendants on the same ground as before.

A. I don't recollect; I could not recollect.

Q. What is your memory on that subject, as to whether you did or did not make any suggestion or whether there was any alteration made in it after you first saw it, or whether you swore to it just as it was presented to you?

Solicitor for defendants objected to the question on the same ground as before, and for the additional reason that the witness has said he does not recollect.

1545 A. I don't recollect whether it was changed or whether it was not; I would not say.

Q. Did you ever meet anybody else, any other lawyer, I mean, in connection with this matter, except Wiley & Straight?

A. No, sir.

Q. Did you ever meet Mr. Calkins?

A. No, sir.

Q. You never had any conversation on this subject with him?

A. No, sir; not in person.

Q. Didn't you meet him in Lafayette at the time or about the time that this paper was being filed?

A. I did not; I don't recollect if I did; it was through correspondence or through correspondence of Straight & Wiley, and Calkins, if there was any. I don't recollect; Calkins was interested in the matter.

Q. How do you know that?

A. Because Mr. Wiley told me so.

Q. Didn't Mr. Wiley tell you in his first conversation—he opened this subject to you, didn't he; you didn't open it to him?

A. I think he spoke of it first.

Q. Didn't he tell you he wanted the use of the name of some one who was a tax-payer in the county where aid had been voted to get a foothold in this lawsuit, so as to help collect labor and supply claims, or words to that effect.

Objected to by solicitor for defendants on the same ground as before.

A. He might have said that; I don't recollect personally whether he did or not; he might have said that.

Q. Did he tell you that Mr. Swan was going into the matter?

A. I don't believe he did.

1546 Q. Didn't he tell you when this paper was presented to you, in which Mr. Swan's name was presented along with yours?

A. He might have told me, but I do not recollect it postively that he did say anything about Swan.

Q. The name of Swan must have been read over to you when this paper was read, wasn't it?

A. It might have been.

Q. Do you carry any recollection now as to whether it was or was not?

A. I would not say positively whether it was or was not. I will say this; that I have not seen Mr. Swan in person.

Q. I am not asking that; I am asking whether or not it was not stated that Swan was to go into this matter?

A. I don't recollect.

1547 Cross-examination by Col. COOPER:

Col. COOPER: I would like to have it stated in behalf of whom these questions are asked.

Mr. CRAWFORD: These questions are asked by Mr. Crawford; that appears. The court can figure out who I appear for.

Col. COOPER: I would like to know, because I want to know whether these questions are asked by Mr. Crawford on behalf of any party to the suit.

Mr. PIERCE: I don't know what your purpose is in going all over that ground. We have had that settled two or three times. We had it settled once by Judge Gresham.

Col. COOPER: I want the record to show exactly what the fact is. If Mr. Crawford appears here simply on his own behalf, then, of course, that is another thing. I am perfectly willing Mr. Crawford should examine this witness, so far as Mr. Crawford's conduct or actions in reference to this matter are attacked in anything this witness knows or has done, but I am not willing that Mr. Porter should have the benefit of a matter of that kind.

Mr. PIERCE: These questions propounded by Mr. Crawford and the answers by the witness are all adopted by me as counsel for Mr. Porter and on his behalf.

Col. COOPER: Prior to the time you saw Mr. Wiley the first time you knew something about the condition of this railroad, did you not?

1548 A. In regard to the condition of the road?

Q. The condition of the indebtedness of the road.

A. Yes, sir; I knew something about it.

Q. I wish you would state, at the time the receiver was appointed, about the debts that the company owed along the road; the situation of the debtors.

Solicitor for complainant objected to the question as incompetent, immaterial, and improper.

A. Well, the railroad company owed pretty nearly everybody on our whole line of road—pretty near everybody.

Q. I will ask you whether or not the men had not been allowed to go without payment from early in the spring of 1884, whether or not large amounts of money were owed along the line, and whether or not men had not been ruined along the line of that road by either working for the road and not getting their pay or by trusting men who were working for the road for goods and groceries, and so forth, and who were unable to get their pay, because the men did not get their pay; isn't that so?

A. Yes, sir; a great many men had furnished ties and furnished provisions and furnished meat and furnished labor that have never got their pay.

Q. It caused great distress along the line of the road, did it not?

A. They are all poor and need their pay. They had to quit business—some did.

Q. Is it not true that the tax-payers along the line of that road
in your town had a very great sympathy towards these men
1549 and a bitter feeling toward the railroad company on account
of that, and towards Mr. Crawford and those connected with the road?

A. Yes; they feel as though there was no contract filled in regard to the pay of the hands and paying the debts contracted by the parties that was furnishing materials and goods and board, and so forth.

Q. Was it not true last winter that along the line of that road many men were practically paupers, subsisting on charity, on account of not being able to get what was due to them from the railroad company or from Mr. Crawford?

A. Yes, sir; people right in our town that had claims—I don't know whether the claims are good—they had claims from the railroad company and from trusting labor, from trusting goods, and boarding the men.

Q. So far as you know, what is the feeling of the tax-payers in your town about contesting the validity of this mortgage so as to prevent Mr. Porter and those associated with him from taking all there is there and leaving the creditors to go without anything?

Objected to by solicitor for complainant.

A. They just feel as if all those claims should be paid. It is right and honest and just that it should be paid. There is not a claim in our township but what is just and ought to be paid a hundred cents on the dollar.

Q. For work actually done and material actually delivered?

A. And for board and contracts and provisions furnished
1550 men that was laboring on the road.

Q. Didn't that feeling run so high that there came near being a riot on the road?

A. Yes, sir; there was a riot, and they tore up the track, two or three Germans. They stated and they said they must have some money, their families were in need, and they had to be supported by the county. They did take up some rails. They swore they would tear the track up if they didn't pay them; they needed their money.

Q. Have those men ever been paid up to this date?

A. No, sir; not to my knowledge.

Q. Does that feeling exist along the line of the road yet?

A. Yes, sir.

Q. Substantially, as I understand you, the road is built in part on unpaid labor and with unpaid material?

A. Yes, sir.

Q. And if the tax-payers can defeat Mr. Porter and prevent him from taking this road and leaving these debts unpaid, they are disposed to do it?

A. I think all the tax-payers and all the laborers ask is just compensation for their labor and for their money paid out all along. They do want that, and will have it if they can get it. It is right that they should have it.

Q. Do you know in a general way about how much the gross amount is that is owed in your township?

A. I would say that it would not be less than $30,000 with the stock in Oak Grove township.

Q. Do you mean stock?

A. Stock and the outstanding debts.

1551 Q. That is money you paid for taxes and the outstanding debts in your township, not less than $30,000.

A. Not less than that, and, I think, it is more.

Q. Whom did Mr. Annabal appear in court at Lafayette for when he made the statement?

A. He appeared for Mr. Crawford.

Q. He made the statement, as you remember, about Mr. Crawford negotiating a loan in open court?

A. Yes, sir, he made the statement in open court.

Q. That must have been as early as 1883?

A. I haven't got it, but I can get the exact date to a day; I don't recollect the date of that.

The signature of the witness to above deposition is waived by agreement of counsel.

Solicitor for complainant produced the contract with the Smith Bridge Company, according to the stipulation made, which is hereto attached, marked "Exhibit R."

Col. Cooper: Counsel for defendants notifies counsel for complainant that as there has not yet appeared any evidence of the bonds the demand for the payment of the interest and all things that are necessary in order to make a foreclosure of a mortgage, that they will rely upon the rights of their clients before the court on this hearing on account of that deficiency, unless it is supplied as a matter of proof.

1552 In the hurry at the close of the examination last evening, when the matter about the vouchers and the tabulated statement of the vouchers in the book and the pay-rolls —, I neglected to make this provision, which I understood would be only fair: That if, on the examination of the vouchers, it should appear that they are in any way incorrect we shall want to take testimony on that question, unless solicitor for complainant will stipulate as to what they may be. I want to examine those vouchers.

Adjourned to Friday, November 27th, at 10 o'clock a. m.

1553 *Defendants' Rebuttal Testimony.*

FRIDAY, *November 27th*, 1885.

Parties met pursuant to agreement at 2 o'clock p. m.

Present: Col. Cooper, solicitor for defendants; H. A. Gardner, Esq., solicitor for complainant, and Henry Crawford, Esq.

J. Q. BAIRD, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. State your name, age, occupation, and residence.

A. My name is J. Q. Baird; age, 55; my residence is in the town of Lake, near Chicago; occupation, civil engineer.

Q. What experience, if any, have you had in railroad building?

A. I have been at it quite a number of years.

Q. How many?

A. I began before 1860 at first. I was on the Atlantic and Great Western. After the war, up to 1871—I didn't do any more at it until after 1871. I have been at it pretty much all the time since then—a great deal of the time.

Q. Were you connected at any time with the construction of the Chicago and Great Southern railway? If so, when did that
1554 connection commence, and in what capacity?

A. I began in April, 1882, and I was in the capacity of chief engineer until April, 1883.

Q. About one year?

A. About one year; yes, sir.

Q. Who employed you as chief engineer?

A. Mr. Crawford.

Q. Chief engineer of what?

A. Of the Chicago and Great Southern.

Q. What were you duties as chief engineer generally?

A. To lay down a line and construct it accordingly.

Q. Did you go on the line in April, 1882?

A. Yes, sir.

Q. Did you make any estimate at that time of the work to be done and materials to be furnished and the cost thereof?

A. Well, during that summer I did; I was at it all the summer of 1882.

Q. I will ask you to state whether you made those estimates in writing or not?

A. Yes, sir; I think they were; I am not sure. I think they were made in writing. Some of them were, I know; in regard to the earth-work and the ties, and such matters as that, — were made in writing.

Q. What did you do with the estimates thus made?

A. I turned them into the office there at Goodland.

Q. Did you make more than one copy?

A. I think not; I don't remember that I did.

Q. Do you know what was done with them there at Goodland—whether they were sent elsewhere?

A. I do not.

1555 Q. Did you afterwards make any calculation as to the cost of the road whilst you were on the line?

A. Yes, sir; I was continually, while I was on the line, making estimates of the cost of the road, what it would take, and so on.

Q. Up to the time you left did you have your estimates compared as to the actual cost of work done while you were there with your estimates made as to what it would cost?

A. Well, my recollection is that they run under instead of over.

Q. That is, that the actual cost was under the estmate instead of over the estimate?

A. Part of it was I know.

Q. What part?

A. The part from Fair Oaks to Goodland.

Q. You have not a copy of your estimates as made?

A. No, sir.

Q. Have you no recollection of what they were in substance?

A. I have some memoranda and recollection, which, perhaps, would help me out.

Q. And from the two can you state substantially what the estimates were as to the actual cost of the work to be done, and what it cost as to what had been done while you were on the road?

A. The road, as I took it, there had been nothing done, or very little done between Fair Oaks and Goodland, a distance of 22 miles. We had to made a new survey. It was comparatively a level country, and the estimates were made, including what had been done and what was to do yet, at an average of about 6,000 yards of grading to the mile the entire distance.

1556 Q. You may state what the reasonable cost of that road was, based upon the then price of labor and materials—upon the work to be done from Fair Oaks to Attica.

Solicitor for complainant objected to the question on the ground that there is no evidence to show that the witness knows what it cost.

(Question waived.)

Q. I will ask you, then, whether you know what the price of materials and labor were, during the period in question, necessary in building that railroad.

A. Do you mean to include in that the iron or the steel that was put on the road?

Q. You may leave out the iron and steel.

Mr. **Gardner**: If you want him to give his estimate of what it ought to cost, all right; but for him to state what it did cost it is incompetent, because he does not know. If you want him to estimate the cost of materials and the actual cost of constructing that road he can give his estimate, but I don't think it is competent to ask him what it actually did cost.

A. The grading—I know about what that cost; not exactly, but very nearly.

Col. **Cooper**: You may state.

A. My estimate on the grading was thirteen cents per cubic yard, and some of it was done for about 11, 12, and 13, along in that way, as there might happen to be a bad place to go through, and I estimated the ties, 2,640 ties to the mile, at a cost of 40 cents a tie.

Q. Have you got a statement made up, from your memoranda and your recollection, as to what the total cost of the road was?

1557 A. I have a memorandum here that was jotted down at that time from which I can state some items. (Witness refers to memorandum.)

Q. What were the total number of cubic yards of earth-work moved and the price?

Mr. **Gardner**: Is he now telling from an original estimate what those were?

Col. **Cooper**: What is the memorandum you have in your hand?

A. My memorandum is the grades from Fair Oaks, the actual distance 22 miles, averaged about 6,000 yards per mile, or 132,000 yards; that was my estimate. My recollection is, the measurement was about 120,000 or 125,000, and there had been some work done. I estimated the whole thing as though there had been nothing done.

Q. How much it was from the beginning, taking it from the raw prairie?

A. Yes, sir; taking it from the raw prairie.

Q. How much a cubic yard?

A. I estimate it 13 cents.

Q. Was that a fair estimate of the actual cost?

A. Yes, sir; it didn't cost that.

Q. It did not?

A. My recollection is it did not cost any more than that.

Q. How much would that be—have you figured it out?

A. That would be about $17,000.

Q. From Fair Oaks to Goodland?

A. Yes, sir.

Q. How much from Goodland to Oxford?

1558 A. I estimated that; that work was done when I went there. It was graded, and the ties and iron were laid down on top of it, I believe, the entire distance; but I estimated it——

Mr. GARDNER: Did you make the estimate at that time?

A. Yes, sir.

Q. Did you make estimates of what that was at that time?

A. They were not accurate estimates.

Q. At whose request did you make those estimates at that time?

A. No one's; I made them for my own information and for the information of the road.

Q. Did you ever report those to any one?

A. I don't remember whether I did or not.

Q. Why did you make estimates on that portion that was already built?

A. We had to go over the entire line again and change it in some places.

Q. Did that necessitate your estimating for the whole length of the line?

A. In some places we had to change the grade.

Q. Did you make this memorandum at that time—the memorandum you have got in your hand?

A. I made it during that summer and fall.

Solicitor for complainant objected to the testimony of the witness in regard to the cost of the road.

Col. COOPER: Did you get at approximately the total amount of earth-work between Oxford and Goodland?

A. Yes, sir; approximately we could. We did not get at it exactly; we did not aim to get at it exactly; we did not restate it or remeasure it very much in that direction.

1559 Q. I mean approximately.

A. Yes, sir.

Q. I mean within 5,000 cubic yards or 10,000 cubic yards.

A. Yes, sir; I should think we could come nearer than that.

Q. You may state how much earth-work there was done and to be done between Goodland and Oxford.

Objected to by solicitor for complainant.

A. I estimated it about 18,000 yards.

Q. At how much a cubic yard?

A. 14 cents.

Q. Was that as much as the work had actually cost?

A. My recollection is that was the price; it was the worst material, or considered the harder material to handle than that right north, and my recollection is it was estimated about 14 cents.

Q. Did you estimate the earth-work to be done between Oxford and Attica?

A. Yes, sir.

Q. How many cubic yards were there to be done there?

A. Well, there I don't remember, because we did not complete that; we completed the earth-work to below Pine Village, and it is only from recollection and jotting it down that I remember; from Oxford to Pine Village was about 5,000 yards of earth-work; that is from recollection.

Q. How much from Pine Village on to Attica to be done?

A. It was heavy, very heavy work from there on—part of it.

Q. Fix the outside figure as to how much in your judgment the earth-work was which was to be done between Pine Village and Attica.

1560 A. Well, I should think there was some 350,000 yards in eleven miles.

Q. What was the cost of that?

A. That contract was 16 cents per yard.

Q. Measured both ways?

A. Yes, sir.

Q. How much, from your memorandum and your recollection, was the reasonable cost of what had been done at the time you left there—the actual cost of what had been done at the time you left the work?

Solicitor for complainant objected to the question because there is nothing in the record to show that the witness knows what it cost.

Q. Over the whole line, from Attica to Fair Oaks, the earth-work?

A. A rough estimate—that is, including iron, ties, and bolts and spikes—was about $490,000; that was my estimate.

Q. Does that include all the work that had been done at the time you went there?

A. Yes, sir.

Q. As well as what was to be done in order to complete that road?

A. Yes, sir.

Q. Does it include the bridges?

A. Yes, sir.

Q. And the crossings?

A. Yes, sir.

Q. And all the culverts and cattle-guards?

A. Yes, sir.

Q. And the earth-work?

A. Yes, sir.

Q. How much of the whole work had been done between Attica and Fair Oaks proportionately when you left in April, 1883?

A. The grading was entirely done to within about eight miles of Attica; there was a little gap in the iron between Fair
1561 [Oaks] and Goodland that was not down, and some of the bridges between Fair Oaks and Goodland were only temporarily in; the timber was not there, and they were only temporarily in; between Oxford and Goodland the road was in running order, very good running order, and the bridges were, one or two of them, in below Oxford—one or two, and perhaps there was a small amount of grading to do; I think not much though; that is my recollection.

Q. What would this sum of $490,000 cover as to the cost of construction?

A. Well, it is my impression it would cover the entire cost of construction.

Q. From the beginning—taking it from the beginning?

A. Yes, sir; about $490,000. I would not be exact.

Mr. GARDNER: Over what ground?

A. From Fair Oaks to Attica.

Col. COOPER: To the junction of what was called the Block Coal road at Attica?

A. Yes, sir.

Q. Were you familiar with the prices of material and labor at that time?

A. My recollection is that we paid about $39 a ton for steel. I would not be sure, but that is my recollection. I may be mistaken about that, but that is my recollection of it. I estimated it at $42 delivered.

Q. How much of the total cost of $490,000 represents the iron and steel? And by that I not only mean the rails, but the splices, bolts, nuts, fish-plates, and so forth.

A. About $200,000.

1562 Q. Are you correct about that? Have you got the matter figured up in your memorandum?

A. My recollection is it took 82 tons and a half of steel to the mile.

Mr. GARDNER: State the size of the rails at the same time.

A. The rails were fifty-two pounds to the yard, and I made a calculation that it would take about 82 and a half or 83 tons to the mile; and then I estimated somewhere near 130 tons of fish-plates at the same price, and somewhere near 2,000 kegs of spikes, and I don't remember the number of bolts—how many kegs of bolts.

Col. COOPER: Have you got a memorandum of the matter?

A. I have got a memorandum here; I set the whole thing down. 1,865 kegs of spikes.

Q. At how much a keg?

A. I have got them down three dollars and a half per keg; I would not be positive whether that is three and a half a keg or three and a half a hundred. I just say three and a half; I don't remember about that now at this date. I knew at the time, but I don't know now.

Q. What is the total number of yards of earth-work that you have in your memorandum?

A. I have got here about 500,000.

Q. About 500,000 cubic yards of earth-work?

A. Yes, sir.

Q. At an average of how much?

A. It run from 13 to 16 cents. It averaged, perhaps, about fourteen and a half cents.

Q. That memorandum that you are referring to, was that memorandum made at the time, during that year you were on the road?

A. Yes, sir; it is the only memorandum book I have of it.

1563 Q. How many thousand ties have you got?

A. About 140,000.

Q. Of what material were those ties composed?

A. There were some of them oak, and some of them were ties that were brought here across the lake—hemlock and spruce. The majority of them that were put down, I think, were hemlock and spruce.

Q. What is called soft wood?

A. Yes; although there were some oak ties; I did know at one time; I had a memorandum of it, the exact amount of the different ones, but I haven't got it now—not here.

Q. Have you stated the total number of cubic yards of earth-work?

A. About 500,000, I think.

Q. How many thousand feet of timber for cattle-guards and bridges?

A. I haven't got that.

Q. Is that included in the estimate of $490,000?

A. That is included in the estimate, bridges and culverts; it doesn't say anything about cattle-guards; it didn't mention that, I know; generally included that in the small sluiceways, the cattle-guards.

Q. Taking the years 1881 to 1884, inclusive, four years, what would be the reasonable cost of that railroad aside from right of way and legal expenses, in its construction, including engineering services and all?

Objected to by solicitor for complainant.

A. Well, when I first looked at the line there I estimated it could
be built for $10,000 a mile. I think I was not far wrong; taking
the whole years 1881, 1882, 1883, and 1884, I should think
1564 it would be very nearly about that; 1881 would be more
than that, because material was higher in 1881 than it was
in 1882 and 1883.

Q. That would be about $560,000?

A. Somewhere near that, yes.

Q. Your estimate that you made in your memorandum-book at that time, you say, shows $490,000?

A. About $490,000. I should think it ought to be completed for $10,000 a mile, all complete, allowing for exigencies.

Q. What kind of metal were the rails that were laid after you got there?

A. There was some iron there at Goodland when I got there, and I took an estimate of it, but I don't remember now what it was; we laid that, and it was laid from Goodland to Oxford, as I saw, and perhaps two miles north of Goodland. The balance of it was laid with Joliet steel; we received quite a number of tons; I don't remember how many; perhaps 2,000 tons at Fair Oaks from Joliet; we had quite a pile of it there.

Q. I want to ask you on account of what is the difference between $10,000 a mile—which you say is what it ought to have been built for—and the price you have estimated, $490,000; a difference of some $70,000?

A. I should think that would be an outside estimate to cover everything; that was my idea of it.

Q. Outside of equipment?

A. Yes, sir.

Q. Is this figure—$490,000—based on what the work did 1565 actually cost while you were there?

A. From my recollection it is.

Q. And from your memorandum made in your book?

A. Yes, sir.

Q. Not only what work had been done up to the time you left, from the beginning, but also what yet remained to complete it?

A. Yes, sir.

Q. Was there anybody with you as assistant engineer?

A. Yes, sir.

Q. Who?

A. Mr. W. S. Gamble and Mr. John Gordon, of Goodland.

Q. Where is Mr. Gamble?

A. He is sick, I presume, to-day; he has not been in to-day, at all events; the presumption is that he is sick; he was not feeling well when he left on Wednesday evening, and I have not seen him since.

Cross-examination by Mr. CRAWFORD:

Q. Mr. Baird, when did you leave the road, did you say?

A. About the first of April, 1883.

Q. During the year that you were there the work was done and paid for, was it not, on vouchers approved by you?

A. Part of it was, yes; I think it was.

Q. Take, for instance, all the grading?

A. No, the grading from Oxford to Goodland was not; I don't know anything about that.

Q. I said all the work that was done while you were there.

A. I gave estimates of the amount of work; whether it was all paid for I don't know.

1566 Q. That was the way of doing business, wasn't it? You gave estimates and then they were attached to the vouchers?

A. Such estimates were attached to the vouchers; I know some of them were paid.

Q. Those were not guesswork—those were actual measurements, were they not?

A. Yes, those were measurements.

Q. So that as far as you know your knowledge of the material and work which was done during the year that you were connected with that road, that it was estimated at the exact figures that it cost?

A. The grading was estimated at the exact figures it cost.

Q. When you had occasion to buy material in the way of timber or anything else?

A. I gave vouchers for it.

Q. You gave vouchers for it at the exact cost, didn't you?

A. All I bought, yes.

Q. The vouchers would be much better evidence, then, of the cost than your figues made up now, wouldn't they?

A. They would be the true thing.

Q. Have you given the subject any attention whatever since you left the road nearly three years ago?

A. Very little.

Q. When were you requested to make up an estimate of this matter, as you testified to-day?

A. It was a few days ago I was asked if I could look up any memoranda in regard to the thing—if I had any recollection about it. I began looking over my papers.

Q. In the last week or ten days?

A. I think it was.

1567 Q. Up to that time you hadn't given the matter any attention at all?

A. Only casually.

Q. What do you mean by casually? What occasion had you to give it any attention casually from the time you left?

A. Not any special occasion.

Q. Did you make up any new estimate or figures within the last week or ten days?

A. No, sir.

Q. What was the paper from which you read or were looking at while you were giving your answers to questions?

A. This is my old memorandum that I had at the time I was on the road.

Q. Will you be kind enough to turn to that page of it at which you were looking there, which has reference exclusively to this business, and let us see what it is?

A. (Memorandum handed to counsel.)

Q. Mr. Baird you have now exhibited to me a page in the memorandum-book; do I understand you to state that that page of it as it stands there now was put together by you in 1882 and 1883?

A. The most of it was.

Q. What part now. Just dissect it and say whether it is not fresh—absolutely fresh from beginning to end.

A. No, sir.

Q. State what part of that is old and what part is new.

A. In regard to this grade from Attica to Pine Village, I changed that from some recollection I had.

Q. Where is it changed on that paper? What is the change?

A. At one time I had 450,000 yards. I changed it to 400,000, and that is even not correct. I was looking for some other papers.

Q. When did you change it?

A. I done that to-day.

1568 Q. Do you mean to say that from the top to the bottom there of that page, with the exception of what you have noted there, you made it in 1882 and 1883 in that way?

A. I don't know when else it was written.

Q. What occasion had you in 1882 and 1883 to make out an estimate of that kind?

A. Why, I done it for my own private information.

Q. Take for instance from Goodland to Oxford; you state that in 1882 when you went there that road was done?

A. That road was graded, yes.

Q. And the rails were on it?

A. Yes, sir.

Q. And everything?

A. Yes, sir.

Q. And do you pretend to say that, as a civil engineer, for your private information you made an estimate of that, when you could have found out its exact cost by existing vouchers?

A. I didn't go to the vouchers for it.

Q. You said you were making up something for your own private information?

A. Yes, sir.

Q. What object had you in making up an estimate of something that had been done and paid for from a mere approximation?

A. I wanted [to know] how near I was going to come out with my original calculation.

Q. But you were not there to originally calculate how much that road would cost, because it had been built before you had anything to do with it, hadn't it?

A. I wanted to know how near it would come to my calculation.

1569 Q. How near it would come to your calculation?

A. Yes; of ten thousand dollars per mile.

Q. Did you ever find out how much the work actually cost that had been done before you came there?

A. I never found out what it actually cost; I don't remember that I did; if I did I have forgotten; I could not find any one that could tell me.

Q. You were doing it then for your own gratification, as a civil engineer, or for the use of the company, or what?

A. I was subpœnaed to come over here.

Q. I mean when you made this memorandum?

A. I was doing that for my own information; yes, sir.

Q. You put down nothing in here for engineering expenses, did you?

A. No, sir.

Q. Nothing for legal expenses?

A. No, sir.

Q. Nothing for sidings?

A. No, sir.

Q. Nothing for depots?

A. No, sir.

Q. Nothing for tanks?

A. No, sir.

Q. Nothing for right of way. You was a civil engineer, and you knew that all those things entered into the construction of the railroad, didn't you?

A. O, yes, sir.

Q. And you know they enter into the cost of it, and have to be paid for?

A. Yes, sir.

Q. And yet you were making up this for the purpose of finding out what your ideas would be for the cost of the work that was necessary to be done, were you?

A. I was making it up to find out about what the grading
1570 and ties and iron, and so forth laid down on the road would
cost.

Q. What was your idea in spending time on that to find out what they would cost when you could have referred to the vouchers and found out what they had cost—that is, the work which had been done?

A. I asked for the vouchers and never could get any.

Q, Where did you ask for the vouchers for that purpose?

A. At Goodland; at the offices there.

Q. For that purpose?

A. Yes; I wanted to see; I could not get any.

Q. Who had the contract for the work north of Goodland—for the grading?

A. I think John Nack had it.

Q. He had it all, didn't he?

A. I think he had.

Q. His vouchers and receipts and estimates are far better information as to what the cost of that work was than anything you could state, are they not?

A. O, yes; I am only stating from memory and from a memorandum which I have in my hand.

Q. Who had the contract for the earth-work from Oxford to Attica?

A. Mr. Irwin.

Q. His estimates and the amount of the payments made to him would be far better evidence of that than the other?

A. That would be the true evidence.

Q. You never bought any rails, did you, during the time you were there?

A. No, sir.

Q. You never bought any ties, did you?

A. I don't remember.

Q. Not one?

A. I don't remember whether I bought any ties or not.
1571 I contracted for some—whether they were delivered or not
is another question; I think they were not delivered.

Q. Practically you bought no ties, did you?

A. I didn't pay for any.

Q. Did you buy any except in the one instance you speak of?

A. I don't remember of making but the one purchase.

Q. Did you buy any spikes?

A. No, sir; I did not.

Q. Do you know whether three and a half cents a hundred or three and a half cents a keg was the price of spikes at that time?

A. I cannot tell from that memorandum.

Q. It would make quite a difference, wouldn't it?

A. It would make a difference, a great difference.

Q. You are a civil engineer and ought to be exact in figures. You didn't know then and don't know now as to whether spikes were worth three and a half cents by the keg or three and a half cents a hundred?

A. It is so badly put down there; it does not state.

Q. Have you got any knowledge of it now, as an engineer?

A. I haven't been doing anything of that work for a year, and I don't know what the prices of them are now.

Q. Do you know what they were then, from what you know now, as to whether they were three and a half a keg or three and a half a hundred?

A. I could not state positively.

Q. Do you know how many spikes there are in a keg?

A. There are a hundred and fifty pounds in some and some have two hundred.

1572 Q. If they are three and a half a hundred instead of being three [and] a half a keg it would make a difference of nearly double your calculation there, wouldn't it?

A. It would make a difference of nearly one-third more—one-half more.

Q. Did you make any calculation in this for any stone-work?

A. Yes, sir.

Q. Whereabouts?

A. At the Wabash river.

Q. I mean stone-work in grading?

A. No, sir.

Q. Isn't there stone-work down there, and a very large amount of it?

A. There is some.

Q. You made no calculation for that, did you?

A. There is nothing in there; no, sir.

Q. What did you change the figures of the grade between Pine Village and the Wabash river from 450,000 to 400,000 for?

A. We made different calculations on that at different times.

Q. You said you changed that, as I understood you, to-day.

A. Yes, sir; I changed that this morning.

Q. What did you change it to-day for?

A. Because, from memory and recollection, I ascertained that it was not correct.

Q. What recollection?

A. Recollection of the transactions.

Q. Do you mean to say then, when you put this down originally, that it remained at 450,000 yards, as you wrote it along in 1882 until to-day?

A. That was not taken from the records, you understand; it was taken from my——

Q. I am asking you whether you wrote the 450,000 yards in 1882 or 1883.

A. I don't know just which year I wrote it in.

Q. Did you write it when you were on the work?

1573 A. I wrote it when I was on the line, somewhere there; I don't know whether I wrote it on the work or not.

Q. I mean while you were on the work; during the time you were employed?

A. Yes, sir.

Q. You had a good—better—information from the profiles and papers to know whether it was correct then than you do now, if it was written then, hadn't you?

A. If I had taken it from the records I would have had.

Q. If you were making up a paper that was intended to be even approximately accurate, your recollection was fresher then than it is now, wasn't it?

A. Yes, sir.

Q. And you did not wilfully turn you back on papers that would have given you the information, did you?

A. O, no, sir.

Q. How did you come to change that figure, 50,000 yards, and do it to-day?

A. In looking over the matter I got the thing mixed up, I presume; I knew it was originally somewhere about 400,000, and I see I have got it on in one place through, and then there is something between Pine Village. Looking over that I discovered that to-day that I had got it to Pine Village, and then from Pine Village on, and my recollection is it was only about 400,000 yards.

Col. COOPER: In all?

A. In all; yes, sir.

Mr. CRAWFORD: Is you recollection very clear now in 1885 and better than it was when you made this memorandum as a civil engineer, for some practical purpose, in 1882?

A. I don't know as it is; no, sir.

1574 Q. Have you had any paper that — showed you to-day or yesterday or since your attention within ten days has been called to this?

A. I have another private little memorandum which showed me that the two were divided.

Q. What two were divided?

A. Between Pine Village and Oxford, and then from Oxford to Attica.

Q. Where is your other memorandum?

A. I haven't got it here.

Q. That showed you what was divided?

A. That I divided the estimates up. There was about 400,000 yards—that is, the whole thing was about 400,000 yards. There was another little memorandum I had.

Q. In this book?

A. No, sir; it is not in that book.

Q. So you corrected this memorandum?

A. Yes, sir.

Q. By some other memorandum you have got?

A. Yes, sir.

Q. You found out, then, to-day that you had made a mistake of 50,000 yards there in one place, did you; is that what you say?

A. I think I have; I am not positive about it; I only think so.

Q. Haven't you corrected recently in this memorandum the mileage from Pine Village to the Wabash river?

A. No. sir.

Q. Hasn't there been a correction or something or other made there on that?

A. There has been a correction there, but when it was done I don't know.

Q. It is 22 miles to Goodland, isn't it, from Fair Oaks?

A. Yes, sir; about 22.

Q. And 18 to Oxford?

A. Yes, sir.

1575 Q. That makes 40 miles?

A. Yes, sir.

Q. And five miles to Pine Village, you have got?

A. Yes, sir.

Q. 11 miles to the Wabash river?

A. Yes, sir.

Q. Now, where did you get your other half mile in that you have calculated for track-laying and so forth in your estimate that you are making up as a civil engineer?

A. I supposed that 36 and a half miles came from actual measurement; I presume it did.

Q. You presume it did?

A. Yes, sir.

Q. Are you making those figures there simply on presumptions.

A. No, sir; I didn't make those on presumptions; I made them on my judgment as I passed over the country.

Q. On judgment as you passed over the country?

A. Yes, sir.

Q. You have put down here separately the mileage, haven't you, between different places?

A. As near as I can, approximately; yes.

Q. Somehow or other there is a gap between the total you put down here of half a mile in the items, is there?

A. Well, I presume that comes by the bridge at the Wabash river. I think that thing goes simply to the bridge on the Wabash river; that is what I think it is.

Q. Half a mile of bridge there, you think, on the Wabash river?

A. I think that must be it.

Q. Do you think there is half a mile of bridging there?

A. Well, it may not be half a mile; it is very nearly half a mile across from Pine Village over to the other end of the road;
1576 somewhere near that, and that might have been taken from stakes that I saw on the line—I don't remember about that—as I walked on the line.

Q. Now, Mr. Baird, I want you to refresh your recollection and tell when this page and this memorandum was made up and put down in this book.

A. Well, I could not tell you.

Q. Let us have your best impression.

A. I think perhaps it was the winter of 1883.

Q. Long after you quit work?

A. No; before I quit.

Q. What do you mean by the winter of 1883?

A. The first part of the winter of 1883—January or February—somewhere along there.

Q. Do you mean just as you were going to quit?

A. No, sir.

Q. A month or two before you did quit, then?

A. Yes, sir; it was, maybe, some time between the fall of 1882 and the spring of 1883; I don't remember when.

Q. So you want to be understood as saying, then, that after you had been on that line nearly a year *that* you made up figures of approximate estimates as to what the probable cost of the work would be that had actually been done.

A. Well, a great deal of it had not been done.

Q. Part of it had been done?

A. I made part of it; my recollection is, from Goodland down; it was what I estimated before we made up the figures, and I never changed them; I intended to put down the whole thing—what I estimated it at and what it actually measured; that is what
1577 I intended to do and did not do *it*.

Q. Don't you remember making an estimate in the last part of the year 1882, when I was desiring to make a negotiation with Drexel, Morgan & Co., that it would take $400,000 to finish that work and connect the track to Attica?

A. No, sir; I remember making an estimate for you, but I don't remember what the amount was.

Q. What was the amount; you remember making the estimate, don't you?

A. I remember making an approximate estimate.

Q. And wasn't it an estimate made for the purpose of making a foundation for that loan there in New York, and didn't I so inform you?

A. There was an estimate made of that kind.

Q. Wasn't it for that purpose?

A. Yes, sir; for that purpose.

Q. And you knew I was trying to get $400,000 there, didn't you?

A. I knew you was trying to get money.

Q. Didn't I tell you freely there about it, and didn't you know that amount?

A. Four or five hundred thousand dollars.

Q. Didn't you make up the estimate?

A. Yes, sir; I remember making the estimate.

Q. Don't you remember—refresh your recollection on that—that you estimated then that the work then to be done would cost that sum of money?

A. I don't remember, Mr. Crawford.

Q. What was it now?

A. I don't remember any amount I estimated; I don't remember anything about what the amount was I estimated it would cost to complete it.

Q. You haven't got a memorandum on that subject?

1578 A. It seems to me I have a faint recollection that it would cost about $240,000, but then I would not be positive about that at that time.

Q. That it would cost $240,000 at that time?

A. That is a faint recollection that I have, but I could not say whether it would be the truth or not.

Q. Now, at that time the work had been entirely completed from Oxford to Attica, hadn't it—I mean from Oxford to Goodland?

A. Oh, yes.

Q. And the grade had been entirely completed to Fair Oaks, hadn't it?

A. No, sir; not at that time.

Q. In the last part of 1882?

A. If I recollect distinctly, it was about September, 1882, I made that estimate—September or October.

Q. Even in September and October, wasn't that grade done, and the general construction work all done?

A. No, sir; the general construction work was not all done until December.

Q. It was substantially all done, wasn't it?

A. There was a good portion of it done; there was quite considerable to finish.

Q. And the track had been laid, had it not, up as far as Julien, north of Goodland?

A. No, sir; not at that time.

Q. Not in the winter of 1882?

A. We were laid up at or near the Iroquois bridge at that time.

Q. At what time?

A. At the time we made the estimate; at the time we went down over it, and you came there and went over it, and we were

1579 putting up the bridge across the Iroquois river.

Q. What do you mean by came over it? Do you mean when I came down with Mr. Bietch and some other gentlemen?

A. I remember two gentlemen; I don't remember their names now.

Q. That was in September; I am referring to a different time—the very last of the year 1882.

A. About that time—somewhere near that time—we made up this estimate for the loan.

Q. The rails were all there to lay, and they were laid in 1882 up as far as Julien, were they not?

A. No; there were not rails enough to lay any farther than only — build half a mile above the bridge, is my recollection.

Q. That is, the bridge near Julien; Julien is only a mile from the bridge?

A. A mile and a half.

Q. Practically Julien. That is how far from Goodland—seven miles, isn't it?

A. Seven miles to the Iroquois; that is my recollection.

Q. So that the work to finish and to pay for out of the Drexel, Morgan & Co. money would be to put the rails in the track from Fair Oaks down to a little south of Julien, wouldn't it, as far as that part of it is concerned?

A. On that end of the road—yes.

Q. Then from Attica south the grade was all done to Pine Village, wasn't it?

A. Yes, sir.

Q. And that bridge was built, too, at Pine Village?

A. No, sir.

Q. In the last part of 1882?

A. No, sir; that bridge was never built while I was on the road.

1580 Q. Wasn't it started?

A. No, sir.

Q. The grade was done for it, then?

A. Yes; the grade was done for it two miles below that, perhaps.

Q. So that the work then to be done on the road was to finish the grade from Pine Village to Attica and lay that part of the road with steel from Oxford to Attica, the Wabash bridge, and to lay the road with rails from Fair Oaks to just south of Julien; wasn't that the situation?

A. That is about the situation.

Q. How much do you think you estimated for that work then, still to be done?

A. I think my recollection is I estimated it at $240,000. I would not be positive. I would not swear to that at all; it is only a faint recollection.

Redirect examination by Col. Cooper:

Q. To whom did you give the estimate you made of the work to be done necessary to complete the road?

A. To Mr. Crawford.

Q. Have you ever seen it since?

A. No, sir.

Q. Do you remember whether or not that estimate included work that had been done—how much the value of the work was that was there?

A. No; I think not.

Q. You think not?

A. That is my recollection; I think it was just for the uncompleted work; about the amount and as to the amount I would not be certain at all, because I have no memorandum at all to go by.

1581 Q. Do you remember whether you ever gave Mr. Crawford an estimate as to the cost of the whole work, what it would cost?

A. I don't think I did.

Q. Did he ever ask you to make up an estimate of that kind?

A. No, sir; he never said anything to me about estimating the iron or spikes, or anything of that kind.

Q. About the grading; outside of what was actually done while you were there, did you ever make up an estimate for Mr. Crawford as to the cost of the entire earth-work in the road to be done, and which had been done?

A. No; I think not; I think I made up an estimate at the time he speaks of, whatever time it was—my recollection is it was in October, 1882—of the unfinished portion between Attica, or between Pine Village—that is, what it would take to put in the bridges over the Wabash and Pine creek and the long trestle-work this side of Pine Village, and complete the bridges ready for the iron.

Q. Didn't you understand from Mr. Crawford that part of the money that was to be borrowed from Drexel, Morgan & Co., for whose information you made up this estimate, was to be paid for the road south of Attica, the Block Coal road?

A. Yes, sir; I understood that was to go over there.

Q. Do you know about the price of spikes in 1882 and 1883?

A. I don't know; I don't recollect only what that says, and what that says is so indefinite that I could not say whether that is correct or whether it means the price per keg or the price
1582 per hundred.

Q. The item is at three dollars and a half?

A. Yes, sir; it might have been three dollars and a half a keg; I don't know; it seems to me it must have been three and a half per keg, but I may be mistaken.

Q. You may read this memorandum.

Mr. **Gardner**: I want the original of that to go in evidence.

Col. **Cooper**: There are some calculations, additions, and so forth, you made here on the memorandum, are there not?

A. Yes, sir; I made those to-day.

Q. In the presence of counsel and the commissioner here?

A. Yes, sir.

It is stipulated that the small figures of addition outside of the regular account were made here to-day by the witness.

Q. I wish you would read this memorandum exactly as it was produced here by you to-day before the commissioner?

A. (The memorandum is as follows:)

Fair Oaks to Goodland, 22 miles:

Grade av'e ab't 6,000 yds., 132,000	$17,160
58,000 ties, @ 40	23,200
Bridging	5,000

Goodland to Oxford, 18 miles:	
Grade 18,000 yds., @ 14	25,200
40,000 ties, @ 40	16,000
Bridging & culverts	4,500
1583 Oxford to Pine Village, 5 miles:	
Grading 5,000 yds., @ 16c.	8,000
13,000 ties, @ 40c.	5,200
Bridging and culverts	8,000
Pine Village to Wabash river, 11 miles:	
Grade 400,000 yds., @ 16c.	64,000
Bridging, trestling, &c.	12,000
Wabash river stone-work	40,000
1,050 truss bridge, @ $38	39,900
4,660 tons rails, 52 lbs., @ 42c.	195,720
1,865 kegs spikes, @ $3.50	6,500
225 kegs bolts, @ 45c.	1,013
123 tons fish-plates, @ 42c.	5,160
56½ miles track laying, @ 250	14,125
	$490,658

Mr. Gardner: Have you got any other figures in there made at the same time?

A. Yes, sir; there are some made at the same time. I don't know that they were made at the same time or not—about the same year.

Mr. Crawford: Is that the only memorandum of that kind you made up which you have preserved?

A. It is the only one I can find; I looked all through a lot of papers; I may possibly have some more in a box of papers I have at home, but I could not find them; I only accidentally found this.

Col. Cooper: And this, as I understand you, includes the entire work from the beginning?

A. What I was estimating, aiming to get, as near as I could.

1584 The signature of the witness was waived to the above deposition by agreement of counsel.

Solicitor for complainant offered in evidence certificate of redemption in the case of Volney Q. Irwin *vs.* The Chicago & Great Southern Railway Company, which is hereto attached, marked "Complainant's Exhibit 13."

Solicitor for complainant also offered in evidence certificate of redemption in the case of James McCalmont *vs.* The Chicago & Great Southern Railway Company, which is hereto attached, marked "Complainant's Exhibit 14."

1585 Which was all the evidence offered in said cause by either party.

STATE OF ILLINOIS, } *ss:*
Cook County, }

I, John Gray, special commissioner duly appointed by an order of the circuit court of the United States for the district of Indiana, bearing date the 27th of October, 1885, do hereby certify that on the 31st day of October, November 4th, 5th, 6th, 7th, 9th, 12th, 13th, 14th, 18th, 19th, 20th, 23rd, 24th, 25th, and 27th days of November, A. D., 1885, by agreement of R. B. F. Peirce, Esq., solicitor for the complainant, Henry H. Porter; Henry A. Gardner, Esq., solicitor for the defendant, The Chicago and Great Southern Railroad Company, and Col. John S. Cooper, solicitor for various defendants, personally appeared before me, at my offices, rooms 38 and 39, Borden Block, in the city of Chicago, county of Cook, and State of Illinois, F. F. Lacey, George W. McDonald, T. O. Annabel, William Foster, D. J. Lyon, H. A. Christy, Charles L. Allen, Henry Meiselbar, W. F. Cobb, Charles S. Worden, W. G. McMillan, C. R. Adams, John W. Swan, Z. T. Little, A. E. Bingham, M. A. Farr, C. W. Hillard,
1586 S. M. Nickerson, Louis Danziger, T. S. Dick, L. J. Gage, P. B. Shumway, H. H. Porter, Thomas F. Withrow, Robert Law, E. F. Lawrence, George C. Kimball, O. Peckham, Volney O. Irwin, William A. Starin, John N. Jewett, J. E. Stubbs, Henry Crawford, Fred. H. Peters, Joseph K. Barry, Cephas Atkinson, and J. Q. Baird, witnesses to testify on behalf of the defendant and complainant in certain consolidated causes now pending in said circuit court of the United States for the district of Indiana, wherein Henry H. Porter is complainant and the Chicago and Great Southern Railway Company *et al.* are defendants, the bill for foreclosure, and John Hack *et al.* are complainants and the Chicago and Great Southern Railway and others are defendants, creditors bill.

And I do hereby further certify that the aforesaid witnesses were first duly sworn to testify the truth in relation to the matters in controversy in the causes aforesaid, and that the testimony of said witnesses was reduced by me to writing, and the signature of each and every witness to said depositions waived by agreement of counsel.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this first day of December, A. D., 1885.

[SEAL.] JOHN GRAY,
Special Commissioner.

1587 "On the hearing of the intervening petitions of the Cleveland Rolling [Mill] Company, the Pittsburgh Bessemer Steel Company (Limited), Volney Q. Irwin, the Smith Bridge Company, and Crerar, Adams & Co., and others, the complainant Porter formally offered in evidence all the depositions and exhibits which had been taken in the main cause, including the original and supplemental trust deeds to John C. New, and the certificate of the record in the several counties and also certified copy of the articles of consolidation between the Chicago & Great Southern Railway Company and the Chicago & Block Coal Railroad Company."

Correct.

W. P. FISHBACK, *Master.*

1588 DEF'TS' EX. G. W. MCDONALD No. 23.

Articles of consolidation between the Chicago & Great Southern Railway Company of Indiana and the Chicago & Block Coal Company of Indiana.

This agreement, made between the Chicago & Great Southern Railway Company, a corporation existing under the laws of the State of Indiana, as party of the first part, and the Chicago & Block Coal Railroad Company, a corporation existing under the laws of the State of Indiana, as party of the second part, witnesseth:

That whereas the Chicago & Great Southern Railway Company is a corporation organized under the general laws of the State of Indiana, and is duly authorized and empowered to locate, construct, own, and operate a line of railroad in the State of Indiana, extending from a point on the Illinois State line, in the county of Lake, in Indiana, thence southwardly to Brazil, in Clay county, Indiana, and such company has its road now in process of actual construction from the city of Attica northwardly, so as to form a Chicago connection with the line of railroad belonging to the Louisville, New Albany & Chicago Railway Company; and 1589

Whereas the said Chicago & Block Coal Railroad Company is a corporation organized under an act of the General Assembly of the State of Indiana, approved March 3rd, 1865, and entitled "An act to authorize, regulate, and confirm the sale of railroads; to enable purchasers of the same to form corporations and to exercise corporate powers, and to define their rights, powers, and privileges; to enable such corporation to purchase and construct connecting and branch roads and to operate and maintain the same," and the acts supplemental thereto and amendatory thereof, and is under such statutes duly authorized and empowered to locate, construct, own, and operate a line of railroad in the State of Indiana, extending from the Ohio river, in Warrick county, northwardly through the counties of Warrick, Pike, Daviess, Greene, Owen, Clay, Parke, Fountain, Warren, Benton, Jasper, Porter, and Lake to a point on Lake Michigan at or near the mouth of the Calumet river, and said company has actually completed its said railroad from a point in the city of Attica, Fountain county, Indiana, southwardly about twenty-two (22) miles, and has done considerable work in grading other portions of its line in Parke and Clay counties; and 1590

Whereas the line of railroad belonging to said party of the first part, and now in process of actual construction as aforesaid, will, when completed to Attica, intersect in a continuous line with the line of railroad of the party of the second part now actually constructed and in operation southwardly from Attica, so that such two lines of railway can there join, connect, and form one continuous and extended line of railway for transportation of passengers and freight without any change of cars; and 1591

Whereas both the parties hereto have full authority under their respective charters and the laws of the State of Indiana to connect their said lines of railroad as aforesaid, and to merge and consolidate the respective lines of railroads, stocks, franchises, and properties of the said two corporations so as to form a consolidated corporation upon such terms as may be agreed upon:

Now, therefore, in consideration of the premises and the mutual covenants to be performed by the respective parties hereto, as hereinafter expressed, and for the purpose of securing to the several stockholders of the parties hereto all and singular the advantages and profits which will result from a merger and consolidation of all the stock, railroads, properties, and franchises of the said parties hereto, so as to form but one corporation, the said Chicago & Great Southern Railway Company and the said Chicago & Block Coal Railroad Company do hereby adopt the following basis and
1592 articles of consolidation, and do agree upon the due execution
of these presents to consolidate and merge all and singular their respective railways, stocks, property, choses in action, and assets of every kind, and franchises, so as to constitute thereafter one consolidated corporation on the terms and conditions hereinafter stated, viz.:

Article I.

The name of the consolidated corporation hereby created shall be the Chicago & Great Southern Railway Company.

Article II.

The capital stock of said consolidated corporation shall be three millions of dollars, to be divided into thirty thousand shares of one hundred dollars each ($100.00).

Article 3.

The board of directors of said consolidated corporation shall consist of nine persons, to be chosen from among the stockholders at such time and place as may be provided in the by-laws; but until the first regular election for directors of such consolidated corporation the existing board of directors of the present Chicago &
1593 Great Southern Railway Company shall by force of these
presents constitute the board of directors of the consolidated corporation.

Article 4.

On the execution of these articles the stockholders of the two corporations, parties hereto, shall at once become stockholders in the consolidated corporation hereby created to the same amount held by them in either of the present corporations, and all certificates of stock issued by either of the parties hereto and now outstanding shall, as soon as practicable, after the taking effect of this consolidation, be retired and cancelled, and on the surrender of any such outstanding certificates there shall be issued to the party so surrendering a certificate for a like amount of shares of the stock of the consolidated corporation.

Article 5.

All and singular the lines of railway, assets, choses in action, municipal aid, monies, equipments, tools, rails, ties, machinery, books, papers,

and accounts, franchises and property of any and every kind be-
1594 longing to either of the parties hereto, and whether held in pos-
session, reversion, expectancy, or remainder, shall at once, upon the execution of these presents, and without any other or further conveyance, deed, or assignment, pass to and become vested in the said consolidated corporation hereby created, which said last-named corporation shall from thenceforth have exclusive ownership, possession, and dominion thereof; and it is expressly agreed that this consolidated corporation hereby created shall have all and singular the powers, privileges, and franchises in any way now belonging to either of the parties, and especially shall be vested with all those granted to corporations organized under said act of March 3rd, 1865, being the statute under which the party of the second part was organized and is now vested with its powers.

Article 6.

All and singular the debts, contracts, and engagements of
1595 either of the parties hereto are hereby declared to be assumed,
and shall become the debts, contracts, and engagements of the consolidated corporation hereby created; and it is especially declared that the issue of two million dollars of bonds made by the party of the first part hereto, and secured by a mortgage or trust deed executed to John C. New, of Indianapolis, Indiana, and dated November first, 1881, as the same now appears of record in the counties of Clay, Parke, Fountain, Warren, Benton, Newton, and Jasper, is fully assumed by the consolidated corporation, and the mortgage or trust deed recorded as aforesaid for the purpose of securing the payment of said bonds, and interest thereon, shall constitute the first lien upon all and singular the railroad of said consolidated corporation in said last-named counties, from Brazil northwardly to the junction with the L., N. & [A.] Ch'g. R'y Co.; also all the
bonds, equipments, tools, income, property, and franchise as
1596 described in such trust deed; and it is expressly agreed be-
tween the parties hereto, and it is hereby declared to be one of the conditions and trusts of this consolidation, that as soon as the said consolidated corporation comes into existence it will forthwith execute and deliver to said John C. New a proper deed of further assurance to carry into effect the true intent of this article and vest in said trustee a first lien upon the legal title to said entire line of said road as aforesaid.

Article 7.

All books, vouchers, records, deeds, muniments of title, accounts, and other papers or documents in any way relating to the business or property of either of the parties hereto shall at once be placed in the custody of the secretary of the said consolidated corporation, and said books, vouchers, records, deeds, muniments of title, accounts, and papers shall henceforth, on the execution of these pres-
ents, be taken and considered, as far as may be necessary, as
1597 the records, books, and papers of the consolidated corporation.

In order that there shall be no delay in the immediate organization of said consolidated corporation, it is hereby agreed that until otherwise ordered by the board of directors of the said consolidated corporation the common or corporate seal, record-book, and officers of the party of the first part shall be and constitute the corporate seal, record-book, and officers of the consolidated corporation.

In witness whereof, and as duly thereto authorized by their respective boards of directors and a majority in value of the stock of each of the parties hereto, the said parties of the first and second parts have hereto set each its corporate seal, duly attested by its secretary, and each has caused the signature of its president to be hereto affixed this 23rd day of March, 1883.

CHICAGO & GREAT SOUTHERN
RAILWAY COMPANY,
[SEAL.] By WM. A. STARIN, *President.*

1598 Attest: H. CRAWFORD, JR., *Secretary.*

THE CHICAGO & BLOCK COAL
RAILROAD COMPANY,
[SEAL.] By H. CRAWFORD, JR., *President.*

Attest: F. F. LACEY, *Secretary.*

1599 STATE OF ILLINOIS, } *ss:*
County of Cook, }

Before me, the undersigned, a notary public in and for the said State and county, personally came this day William A. Starin, president of the Chicago & Great Southern Railway Company, personally known to me to be the president of said company, and whose name is subscribed to the foregoing instrument, and he acknowledged that in behalf of the said railway company he had signed and delivered the said instrument as the free and voluntary act of the said railway company for the uses and purposes therein set forth; also personally appeared before me at the same time Henry Crawford, Jr., secretary of said company, and whose name is subscribed to the foregoing instrument, and he acknowledged that in behalf of said railway corporation he had signed and affixed to the
said instrument the official seal of said railway company as
1600 the free and voluntary act of the said Chicago & Great South-
ern R'y Co. for the uses and purposes therein set forth; and also personally came before me this day Harry Crawford, Jr., president of the Chicago & Block Coal Railroad Company, personally known to me to be the president of said company, and whose name is subscribed to the foregoing instrument, and he acknowledged that in behalf of said railway company he had signed and delivered the said instrument as the free and voluntary act of the said railway company for the uses and purposes therein set forth; also personally appeared before me at the same time F. F. Lacey, secretary of the said railway company, personally known to me to be the secretary of said company, and whose name is subscribed to the foregoing instrument, and acknowledged that he, in behalf of the said railway corporation, signed and affixed to the said instrument

the official seal of said railway company as the free and
1601 voluntary act of the said Chicago & Block Coal Railroad Company for the uses and purposes therein set forth.

Witness my hand and official seal at Chicago this 23rd day of March, 1883.

[SEAL.] HENRY MEISELBAR,
Notary Public.

I hereby certify that I am secretary of the Chicago & Great Southern Railway Company, and that at a special meeting of the stockholders of said corporation called, upon thirty days' notice, as required by law, and held at the office of the corporation at Attica, Ind., at 11 o'clock a. m. of March 10th, 1883, the above and foregoing articles of consolidation were ratified by a unanimous vote, all the stockholders of said company being present or represented at such meeting.

Witness my hand and the seal of said corporation this March 23rd, 1883.

[SEAL.] H. CRAWFORD, JR., *Secretary.*

1602 I hereby certify that I am secretary of the Chicago & Block Coal Railroad Co., and that at a special meeting of the stockholders of said corporation, called upon thirty days' notice, as required by law, and held at the office of the corporation at Veedersburgh, Ind., at 3 o'clock p. m., March 10th, 1883, the above and foregoing articles of consolidation were ratified by a unanimous vote, all the stockholders of said company being present or represented at such meeting.

Witness my hand and the seal of said corporation this March 23d, 1883.

[SEAL.] F. F. LACEY, *Secretary.*

1603 *Certificate.*

STATE OF INDIANA, ss:

OFFICE OF THE SECRETARY OF STATE.

I, W. R. Myers, secretary of state of the State of Indiana, do hereby certify that the foregoing and annexed is a full, true, and complete copy of the articles of consolidation between the "Chicago & Great Southern Railway Company, of Indiana, with the Chicago & Block Coal Railroad Company, of Indiana, forming The Chicago & Great Southern Railway Company," filed in the office of the secretary of state April 7, 1883, and now upon file in said office.

In witness whereof I have hereunto set my hand and affixed the seal of the State of Indiana, at the city of Indianapolis, this 31st day of July, A. D. 1886.

[SEAL.] W. R. MYERS,
Secretary of State.

1604 DEF'TS' EXHIBIT G. W. McDONALD No. 26.

Deed of Trust.

Chicago & Great Southern Railway Co. to John C. New, trustee. First mortgage, northern division. $2,000,000. Dated November, 1881.

This indenture, made and entered into this first day of November, A. D. one thousand eight hundred and eighty-one, by and between the Chicago and Great Southern Railway Company, party of the first part, and John C. New, of Indianapolis, Indiana, party of the second part, as trustee, for the uses and purposes hereinafter set forth, witnesseth:

Whereas the said party of the first part is a corporation duly created by and existing under the laws of the State of Indiana, and is the owner of all and singular the line of railway, coal lands, equipment, appendages, and franchises hereafter more particularly described, together with the franchises and powers to operate 1605 the same, and levy and collect tolls thereon, all and singular, which property and franchises are now in the possession and use of said party of the first part; and

Whereas the said party of the first part has full authority and power, under the laws of the State of Indiana, to borrow money for its corporate purposes and to enable it to construct, complete, improve, equip, and operate its road, and has the further authority to issue its corporate bonds to effect such loan, and also full authority to secure the same by mortgage or deed of trust upon the northern division of its railroad, constructed and to be constructed, coal lands, equipment, franchises, and income of the said party of the first part, as hereafter described; and

Whereas the board of directors of said party of the first part did, at a regular meeting duly convened and held on the twenty-ninth day of October, 1881, resolve that, for the purpose of borrow- 1606 ing money for the corporate purposes aforesaid, the said party of the first part should prepare, sign, seal, and negotiate a series of bonds, amounting in the aggregate to two million dollars ($2,000,000).00, in the form following, except as to numbers, viz:

UNITED STATES OF AMERICA, *State of Indiana:*

$1,000,000. No. ——.

First Mortgage Northern Division Gold Bond.

The Chicago and Great Southern Railway Company, a corporation existing under the laws of the State of Indiana, for value received, promises to pay to John C. New, of Indianapolis, Indiana, or bearer, the sum of one thousand (1,000) dollars in gold coin of the United States, of the present standard of weight and fineness, at the office of the Central Trust Company, in the city of New York, on the first day of January, in the year one thousand nine hundred

and twelve, with interest, payable in like gold coin of the
1607 United States, at the rate of six per cent. per annum, on the
first days of January and July of each year, on the presentation and surrender of the annexed interest warrants according to their tenor.

The principal and interest of this bond *is* payable without relief from valuation or appraisement laws.

This bond is one of a series of like date, tenor, and effect, amounting in the aggregate to two million (2,000,000) dollars, being two thousand bonds of one thousand dollars each, numbered consecutively from 1 to 2,000, inclusive, all such bonds being equally secured by a first-mortgage or trust deed of even date herewith, conveying all and singular the northern division of said Chicago and Great Southern Railway Company wherever situate, together with all its property, equipment, appurtenances, and franchises, unto said John C. New, of Indianapolis, Indiana, as trustee, which said mortgage or
trust deed has been duly recorded according to law in each
1608 of the counties in Indiana where said northern division is
situate.

This bond shall pass by delivery or by transfer on the books of the said railway company, at its agency in the city of New York, and after any such registration of ownership on the books of such agency, duly certified on the back hereof by the transfer agent, no transfer hereof shall be valid or pass any title hereto, unless made in writing on the books of such agency, unless the last precedent transfer has been made to bearer, in which event the bond shall become thereby transferable by delivery.

This bond shall continue subject to successive registrations and transfers to bearer, as aforesaid, at the option of any holder thereof, in accordance with the above provisions.

No bond of this series shall be valid and obligatory unless the same is duly authenticated by a certificate endorsed on the back thereof duly executed by the said trustee.

In witness whereof the said Chicago and Great Southern
1609 Railway Company has caused the foregoing to be attested by
its president and secretary and its corporate seal to be attached this first day of November, A. D. one thousand eight hundred and eighty-one.

—— ——, *President.*
—— ——, *Secretary.*

With sixty coupons for the semi-annual interest to become due thereon, in the following form, to be attached thereto:

On the first day of July, 1882, the Chicago and Great Southern Railway Company will pay the bearer thirty dollars, in gold coin, at the Central Trust Co. of New York, for six months' interest on its first-mortgage northern division bond.

No. —. —— ——, *Secretary.*

Said coupons differing so as to express the form and time of pay-
ment of each, and having the secretary's signature engraved
1610 thereon, such issue of bonds to be two thousand bonds of one

thousand dollars each, being numbered from Nos. 1 to 2,000, both inclusive, and being also the following certificate, to be attested by the trustee, viz:

Trustee's Certificate.

I, John C. New, of Indianapolis, Indiana, trustee, hereby certify that this bond is one of a series, amounting in the aggregate to two million dollars, as mentioned in the within-described mortgage, which has been duly recorded in the several counties in which the northern division of said railroad is situate.

—— ——, *Trustee.*

Whereas it was further resolved by the said board of directors at such meeting that in order to secure the payment of the principal and interest of such issue of bonds the said party of the first part should prepare, sign, seal, acknowledge, execute, and deliver, in due form of law, a deed of trust or mortgage unto some proper person, as trustee, conveying all the present and in future to 1611 be acquired northern division of railway, appurtenances, contract rights, equipment, coal lands, and income in trust and as security for the payment of such issue of bonds and coupons:

Now, therefore, under the authority and power aforesaid, and in order to secure the payment of the principal and interest of said issue of two million of dollars of bonds as aforesaid, and in consideration of the premises and the further payment by the party of the second part unto the party of the first part of the sum of one dollar, the receipt of which is hereby acknowledged, the Chicago and Great Southern Railway Company has bargained, sold, granted, conveyed, and confirmed, and by these presents does bargain, grant, sell, convey, and confirm, unto John C. New, and to his successor or successors in trust, and for the uses and trusts hereby created, 1612 all and singular the northern division of railway of the said party of the first part, as the same now is or may hereafter be constructed between Brazil, Clay county, Indiana, extending thence northwardly through the counties of Clay, Parke, Fountain, Warren, Benton, Newton, and Jasper to a junction with the Louisville, New Albany and Chicago railway at or northwest from Rensselaer, Indiana, being about one hundred miles in length, together with all and singular the rights of way, road-bed, made or to be made, its track, laid or to be laid, between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, turn-tables, machine-shops, buildings, erections, coal lands, and contract rights in any way now or hereafter appertaining unto said described division of railroad, together with all the engines, cars, machinery, supplies, tools, and fix- 1613 tures now or at any time hereafter held, owned, or acquired by the said party of the first part, for use in connection with its division aforesaid, with all its depot grounds, yards, sidings, turn-outs, sheds, machine shops, lease hold rights, and other terminal facilities now or hereafter owned or leased and enjoyed by the said party of the first part pertaining to said division, together with all and singular the powers and franchises thereto belonging and the tolls, income, and revenue to be derived therefrom.

To have and to hold the said granted premises unto the said party of the second part and its successors forever, in trust, nevertheless, and for the uses and purposes in this indenture expressed—that is to say:

First. If the interest due on any of the above-described issue of bonds, and hereby secured, shall not be paid by the party of
1614 the first part when the same becomes due, and shall so remain in arrears for six months after it is actually demanded at the place where the same is payable, as specified in the coupons given to evidence such interest, or in case the principal of said bonds, or any of them, shall not be paid at their maturity, then it shall be lawful for the party of the second part, or his successors in trust for the time being, and it shall be the duty of such trustee, upon the request in writing so to enter, of the holders of not less than one-half of the then outstanding bonds of the issue hereby secured, and upon receiving satisfactory indemnity for so doing, to forthwith demand, enter, take, and maintain possession of all and singular the railroad premises and franchises hereby conveyed, and as the attorney-in-fact or agent of said party of the first part, by himself and agents or substitutes duly constituted, have, use, man-
1615 age, operate, and enjoy the same, and each and every part
thereof, to as full an extent as the said party of the first part might lawfully do, and shall make from time to time all needful repairs, alterations, and additions thereto, and receive all the tolls, income, and revenue thereof, and after deducting the expenses of such use, operation, reasonable repairs, alterations, and additions, and the cost of taking possession and fair compensation for the services of such trustee for such taking possession and management while in possession, the said party of the second part, or his successor for the time being, shall apply the remaining revenue and income arising from the use of said mortgaged property, and coming to his hand, to the payment of the interest in default and maturity from time to time, satisfying the said coupons in the order of their several maturities, and thereafter apply the residue upon the
1616 principal of said then outstanding bonds.

Second. And upon the further trust that if a six months' default shall occur in the payment either of principal or interest of any of the bonds hereby secured after such actual demand as aforesaid, then it shall be lawful for said party of the second part, or said trustee for the time being, and upon the written request of the holders of a majority in amount of said bonds then outstanding, and upon receiving satisfactory indemnity as aforesaid he shall, with or without entry as aforesaid, cause all and singular the said premises, railway, appurtenances, equipment, and franchises hereby conveyed to be sold as an entirety at public auction to the highest and best bidder, at the city of Chicago, Illinois, after giving at least sixty days' notice of the time, place, and terms of sale by advertisement in a newspaper of general circulation in the city of Chicago, 1617 and like advertisement in a newspaper of general circulation in the city of New York, and on such sale said party of the second part, or the trustee for the time being, shall make, execute, acknowledge, and deliver unto the purchaser or purchasers thereof a good and sufficient deed in fee-simple conveying the said railroad property and franchises so sold, which conveyance shall be a perpetual bar in law and equity against the said party of the first part, its successors and assigns, and all persons claiming or to claim under them, of all right, title, interest, or claim of, in, or to the said premises and franchises, or any part thereof.

The said party of the second part, after deducting from the proceeds of the sale the costs and expenses thereof, and a reasonable compensation to said trustee and his attorneys and agents for services in connection therewith, shall apply so much of the pro-
1618 ceeds as may be necessary to the ratable payment of principal and the then accrued interest of all the said bonds, whether the said principal be then due or not, and if any proceeds of such sale remain in his hands after the full payment of the principal and accrued interest of all of said bonds, then he shall render and pay over the same unto the party of the first part, or its successors or assigns.

Provided, however, That nothing hereinbefore contained shall in any way be construed to take away or interfere with the right of the party of the second part after a six months' default in the payment of interest or principal of the bonds hereby secured to proceed, at his election, to institute legal proceedings in any court of competent jurisdiction to foreclose this mortgage and procure a judicial sale of the property hereby conveyed.

Third. In case of any such taking possession or proceeding to sell the mortgaged premises for default of payment of interest,
1619 if the said party of the first part, before the said bonds shall become due and before such sale shall be made, shall pay and satisfy all interest then in arrears on all such outstanding bonds, and shall also pay and discharge all costs, expenses, and disbursements, and reasonable compensation incurred by reason of such default or possession, then, upon evidence thereof to his satisfaction, the said party of the second part shall thereupon discontinue such proceeding and restore possession of the mortgaged premises to the party of the first part, to be thereafter held subject to these presents, in like manner as if such default or entry had not occurred.

Fourth. The said party of the first part expressly covenants and agrees that it will, on demand, from time to time hereafter execute, acknowledge, and deliver unto the said party of the second
1620 part, and and all such further and other conveyances and assignments as may be necessary and proper to fully convey and vest in the party of the second part, or the trustee for the time being, all such further acquired depots, grounds, estate, equipment, and property as it may hereafter from time to time purchase for use in and upon the said northern division of said railroad which is intended to be hereby conveyed.

And the said party of the first part doth still further agree that it will, in case of any default in the payment by it either of the principal or interest of any of its bonds hereby secured, forthwith, upon demand of the party of the second part or the trustee for the time being, surrender the full and peaceable possession of all and singular the premises hereby conveyed or intended to be, including all the real and personal property by it acquired subsequent to the date of these presents, for use in connection with its said northern 1621 division of railroad, and will also surrender all books of account, records, and papers used by it in and about the operation thereof; and it further agrees that it will not in case of any such demand, entry, or sale make any resistance or delay thereto or make any application for an injunction or other legal process to stay such entry or proceedings.

Fifth. It is especially agreed that all of the said bonds to be issued hereunder shall be upon an equality, so far as regards security for the payment thereof by these presents, notwithstanding the same may be issued at different times, it being intended that this indenture shall operate as a security for all said bonds equally, ratably, and without preference, whether issued at the same or different times.

Sixth. It is agreed that each of the bonds hereby secured shall pass by delivery or transfer registered on the books of the party of the first part at its agency in the city of New York, and after 1622 a registration of ownership in such books and duly certified on the back of any such bond by the transfer agent of the party of the first part no transfer thereof shall be valid unless made upon the said books, unless the transfer has been to bearer, in which event such bond may continue to be transferable by delivery. Any such bonds shall continue subject to such successive resignation and transfers to bearer at the option of the owner.

Seventh. This trust and the security hereby intended shall only extend to such bonds of this issue as shall be certified by said trustee to belong to said issue and to be secured by this mortgage; and when all said bonds, and interest thereon, shall be paid or discharged the trust hereby created shall cease, and the estate hereby granted to the party of the second part shall determine and become extinct, and the full right and title to the premises hereby 1623 conveyed shall revert in said party of the first part, without any further or other acknowledgment, satisfaction, reconveyance, re-entry, or other act.

And it is further agreed that until such default and demand as aforesaid the party of the first part shall have the right to maintain, keep, and hold possession of all and singular the property and franchises hereby granted, manage the same, and enjoy the rents, income, and revenues thereof.

Eighth. It is mutually agreed that the said party of the second part, and his successor or successors in the trust hereby created, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts, omissions, or defaults of any agent employed by him or them; and that said party of the second part, or any successor in said trust, shall be en-

titled to demand, receive, and retain proper compensation for
1624 every labor or service performed, and expense, damage, and
disbursement incurred by him or them in the discharge of this trust in case of default, or taking possession or sale of the premises, and that he or they shall not be liable in any manner for any loss or damage which may happen, unless the same be occasioned by his or their gross neglect or willful malfeasance.

In case the said trust shall become vacant by reason of the incapacity, removal, or resignation of the said party of the second part, or any successor, it shall be lawful for the holders of the majority in amount of the bonds then outstanding to appoint a successor by a writing by them signed, or for any court of record in any county through which said line of railroad runs to appoint such successor on the nomination in writing of not less than the holders of five hundred thousand dollars of said bonds then outstanding.

And upon such appointment being made and the said trust
1625 being accepted, any such successor or substituted trustee
shall, without further act or deed, become vested with all and singular the estate, rights, and powers, and shall perform all the duties of trustee in like manner and with the same effect as if it or he had been named in this instrument as trustee.

In witness whereof the said Chicago and Great Southern Railway Company, by order of its board of directors, has hereto affixed its corporate seal and caused the same to be signed by its president and secretary, and the said trustee has hereto set his hand and its seal the day and year first above written.

THE CHICAGO AND GREAT SOUTHERN
RAILWAY COMPANY,
[SEAL.] By WILLIAM FOSTER, *President.*
JOHN C. NEW, *Trustee.*

Attest: H. CRAWFORD, JR.,
Secretary, 123 *Dearborn St., Chicago, Room* 28.

1626 STATE OF ILLINOIS, }
County of Cook, } *ss:*

Before me, the undersigned, a notary public in and for the said State and county, personally came this day William Foster, president of the Chicago and Great Southern Railway Company, personally known to me to be the president of said company, and whose name is subscribed to the foregoing instrument, and acknowledged that he, in behalf of said railway company, had signed and delivered the said instrument as the free and voluntary act of the said railway company and himself, and for the uses and purposes therein set forth; also personally appeared before me at the same time Henry Crawford, Jr., secretary of the said railway company, personally known to me to be the secretary of said company, and whose name is subscribed to the foregoing instrument, and acknowledged that he, in behalf of the said railway corporation, signed and affixed
to the said instrument the official seal of said railway com-
1627 pany as the free and voluntary act of the said Chicago and

Great Southern Railway Company, for the uses and purposes therein set forth.

Witness my hand and official seal, at Chicago, Illinois, this first day of November, 1881.

[SEAL.] (Signed) WM. A. STARIN,
Notary Public.

STATE OF NEW YORK, }
City & County of New York, } *ss:*

Before me, the undersigned, a notary public for said State and county, personally came this day John C. New, the trustee named in the foregoing mortgage and deed of trust, and personally known to me to be the person who signed the same, who acknowledged that he did sign and seal the same, and accept the trust for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 14th (fourteenth) day of November, A. D. 1881.

[SEAL.] (Signed) ALF. H. TIMPSON,
Notary Public.

1628 STATE OF INDIANA, }
County of Clay, } *ss:*

The foregoing deed was filed for record in the recorder's office of Clay county on the 21st day of November, A. D. 1881, at 8 o'clock a. m., and duly recorded in book Q of mortgages, on pages 185 to 195, inclusive.

Witness my hand and seal this 22 day of July, 1885.

[SEAL.] OWEN T. STARK,
Recorder of Clay County.

STATE OF INDIANA, }
County of Parke, } *ss:*

The foregoing deed was filed for record in the recorder's office of Parke county on the 21st day of November, A. D. 1881, at 8 o'clock a. m., and duly recorded in book 10 of mortgages, on pages 455 to 463, inclusive.

Witness my hand and seal this 11th day of June, 1885.

[SEAL.] HENRY B. CORD,
Recorder of Parke County.

1629 STATE OF INDIANA, }
County of Fountain, } *ss:*

The foregoing deed was filed for record in the recorder's office of Fountain county on the 29th day of November, A. D. 1881, at 8 o'clock a. m., and duly recorded in book 11 of mortgages, on pages 485 to 495, inclusive.

Witness my hand and seal this 8th day of June, 1885.

[SEAL.] MURPHY LEWIS,
Recorder of Fountain County.

STATE OF INDIANA,
County of Warren, } *ss:*

The foregoing deed was filed for record in the recorder's office of Warren county on the 23rd day of November, A. D. 1881, at 11 o'clock a. m., and duly recorded in book 9 of mo., on pages 350 to 358.

Witness my hand and seal this 8th day of June, 1885.

[SEAL.] THOS. J. GRAVES,
Recorder of Warren County.

STATE OF INDIANA,
County of Benton, } *ss:*

1630 The foregoing deed was filed for record in the recorder's office of Benton county on the 23rd day of November, A. D. 1881, at 11 o'clock a. m., and duly recorded in book 11 of mortgages, on pages 455.

Witness my hand and seal this 4th day of June, 1885.

[SEAL.] NEWTON SHEETZ,
Recorder of Benton County.

STATE OF INDIANA,
County of Newton, } *ss:*

The foregoing deed was filed for record in the recorder's office of Newton county on the 23rd day of November, A. D. 1881, at 4 o'clock p. m., and duly recorded in book 15 of mortgages, on pages 54 to 63, inclusive.

Witness my hand and seal this 4 day of June, 1885.

[SEAL.] ELISHA PARSONS,
Recorder of Newton County.

STATE OF INDIANA,
County of Jasper, } *ss:*

The foregoing deed was filed for record in the recorder's office of Jasper county on the 19th day of November, A. D. 1881, at
1631 one o'clock p. m., and duly recorded in book 12 of mortgages, on pages 238 to 247, inclusive.

Witness my hand and seal this 16th day of July, 1885.

[SEAL.] THOMAS ANTRIM,
Recorder of Jasper County.

1632 DEF'TS' EX. G. W. McDONALD NO. 26.

This indenture, made this 9th day of April, A. D. 1883, by and between the Chicago and Great Southern Railway Company, a corporation of the State of Indiana, formed by the consolidation of two certain railroad corporations of said State, respectively, as the Chicago and Great Southern Railway Company and the Chicago and Block Coal Railway Company, party of the first part, and John C. New, of Indianapolis, Indiana, party of the second part, as trustee, witnesseth:

That whereas said former corporation, known as the Chicago and Great Southern Railway Company, did on the first day of Novem-

ber, 1881, sign, seal, execute, and deliver unto the said party of the second part its certain deed of trust or mortgage whereby it conveyed unto the said party of the second part, as trustee, all
1633 and singular the northern division of its railway as the same
then was, or might thereafter be, constructed between Brazil, Clay county, Indiana, and extending thence northwardly through the counties of Clay, Parke, Fountain, Warren, Benton, Newton, and Jasper to a junction with the Louisville, New Albany and Chicago railway at or northwest from Rensselaer, Indiana, being about one hundred and twenty miles in length, together with all and singular the right of way, road-bed made or to be made, its track laid or to be laid, between the terminals aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, turn-tables, machine-shops, buildings, erections, coal lands, and contract rights in any way now or hereafter appertaining unto said described division of railroad, together with all the engines, cars, machinery, supplies, tools, and fixtures then or at any time hereafter owned or acquired by the said railroad company, grantor, for use in connection with its division of railway, together with
1634 all depot grounds, grants, sidings, turn-outs, sheds, machine-
shops, leasehold rights, and other terminal facilities then or thereafter owned or leased and enjoyed by the said grantor pertaining to said division, together with all and singular the powers and franchises thereto belonging and the tolls and income and revenues to be levied and derived therefrom.

The said deed of trust or mortgage being executed and delivered to the said party of the second part as trustee to secure the payment of the principal and interest of a certain issue of bonds executed by the said railway company, grantor, and amounting in the aggregate to two million dollars ($2,000,000.00), bearing interest at the rate of six per cent. per annum, payable semi-annually, both principal and interest being payable in gold coin of the United States, which said deed of trust or mortgage was, shortly after its execution, duly recorded in each of the counties through which the char-
1635 tered line of said railway is situate; and

Whereas it was provided by the fourth specification of said deed of trust or mortgage as aforesaid executed unto the said party of the second part, as trustee, as follows:

"That the said party of the first part expressly covenants and agrees that it will, on demand, from time to time hereafter execute, acknowledge, and deliver unto said party of the second part all such further assurance and other conveyances and assignments as may be necessary and proper to fully convey to and vest in the party of the second part, or the trustee for the time being, all such further acquired depot grounds, estate, equipment, and property as it may from time to time purchase for use in and upon the said northern division of railroad which is intended to be hereby conveyed;" and

Whereas the said Chicago and Great Southern Railway Company, being such mortgagor as aforesaid, by virtue of due
1636 and legal proceedings had by the board of directors and

stockholders of both said corporations, did, on the 10th day of March, 1883, become consolidated with the Chicago and Block Coal Railroad Company, which, before the date last aforesaid, was the owner in fee-simple and unincumbered of the line of railroad actually then constructed and in operation extending from Attica, Fountain county, Indiana, northwardly about twenty-two (22) miles to Yeddo, Indiana, and was also the like owner in fee-simple and wholly unincumbered of the graded road-bed extending from Brazil, Clay county, Indiana, northwardly toward Rockville, Parke county, Indiana, for about the distance of seventeen miles, which consolidated corporation was declared by the agreement between the two companies should hereafter be known and designated as the Chicago and Great Southern Railway Company, being the
1637 party of the first part herein, and which party of the first part is now, by virtue of said consolidation, the owner in fee-simple, absolute, of the said constructed and also partly-completed line of railway as aforesaid; and

Whereas in and by the sixth article of agreement for consolidation with the Chicago and Block Coal Railroad Company it is provided as follows:

"All and singular the debts, contracts, and engagements of the consolidated corporation hereby created, and it is hereby especially declared the issue of two million dollars of bonds made by the party of the first part hereto, and secured by a trust deed executed to John C. New, of Indianapolis, Indiana, and dated November 1, 1881, as the same now appears of record in the counties of Clay, Parke, Fountain, Warren, Benton, Newton, and Jasper, is fully assumed by the consolidated corporation, and the mortgage or trust deed, recorded as aforesaid, for the purpose of securing the payment of
1637*a* said bonds and the interest thereon, shall constitute the first lien upon all and singular the railroad of said consolidated corporation in said last-named counties from Brazil northwardly to the junction of the Louisville, New Albany and Chicago railway, and also all the lands, equipments, tools, income, property, and franchises as described in such trust deed and is expressly agreed between the parties hereto, and it is hereby declared to be one of the trusts and conditions of this consolidation that as soon as the said consolidated corporation comes into existence it will forthwith execute and deliver to the said John C. New a proper deed of further assurance to carry into effect the true intent of this article and vest in said trustee a first lien upon the legal title of the entire line of said railroad as aforesaid:

Now, therefore, in consideration of the sum of one dollar to it in hand paid by the party of the second part, the receipt
1637*b* whereof is hereby acknowledged, and to fully effectuate and carry out the trust of said consolidation as above recited; and, by way of further proper deed of assurance in effectuation of the trust of the original mortgage of November 1st, 1881, the Chicago and Great Southern Railway Company, as a party of the first

part, being a corporation created in and by the said articles of consolidation, do hereby bargain, sell, grant, convey, and confirm unto the said John C. New, and to his successor or successors in trust, and for the uses and trusts expressly designated and recited in said original indenture of November 1st, 1881, the following-described railroad property, appurtenances, income, and franchises, namely: All and singular the northern division of railway of the said party of the first part, as the same now is or may hereafter be constructed between Brazil, Clay county, Indiana, extending thence north-
1637*c* wardly through the counties of Clay, Parke, Fountain, Warren, Newton, Benton, and Jasper to a junction with the Louisville, New Albany and Chicago railway at or northwest from Rensselaer, Indiana, being one hundred and twenty (120) miles in length, together with all and singular the rights of way, road-bed made and to be made, its track laid and to be laid, between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, sidings, engine-houses, turn-tables, buildings, erections, coal lands, and contract rights in any way now or hereafter appertaining unto said-described division of railroad, together with all the engines, cars, machinery, supplies, tools, and fixtures now or at any time hereafter held, owned, and acquired by said party of the first part, for use in connection with its division aforesaid and with all depot grounds, yards, sidings, turn-outs, sheds, machine shops, leasehold rights, and other terminal facilities now or hereafter
1637*d* owned or leased and enjoyed by the said party of the first part pertaining to said division, together with all and singular the powers and franchises thereto belonging, and the tolls, income, and revenue to be levied and derived therefrom:

To have and to hold the said granted premises, appurtenances, and franchises unto the said party of the second part, and his successor or successors, forever, in trust for the uses and purposes expressed and recited in the said original indenture of November 1st, 1881, executed as aforesaid, both to the said party of the second part, with all rights, powers, and duties expressed in said original indenture, to be and remain in every respect unimpaired at the beginning, it being the true intent and meaning of this indenture to fully comply with the trusts of said consolidation agreement and by proper deed of assurance to vest in the said party of the second part as trustee under the original trust deed — and all title claimed and equity which the party of the first part acquired to the said
1637*e* line of railway and property formerly belonging to the Chicago and Block Coal Railway Company, so as to constitute the said original trust deed or conveyance of November 1, 1881, a valid first and permanent lien upon the entire line built or to be built from Brazil, Indiana, to the northern terminus of said division at the junction of the Louisville, New Albany and Chicago Railway, and all the appurtenances, equipment, and franchises and income thereto pertaining.

In witness whereof the Chicago and Great Southern Railway Company has hereto affixed its corporate seal, duly attested by the secretary, and caused the signature of the president to be hereto attached.

CHICAGO AND GREAT SOUTHERN
RAILWAY COMPANY,
By WM. A. STARIN, *President.*

Attest: H. CRAWFORD, JR., *Secretary.*

STATE OF ILLINOIS, }
Cook County, } *ss:*

1637f Before me, the undersigned, a notary public in and for said State and county, personally came this day William A. Starin, president of the Chicago and Great Southern Railway Company, and personally known to be the president of said railway company, and whose name is subscribed to the foregoing instrument, and acknowledged that he in behalf of said railway company had signed and delivered the said instrument as the free and voluntary act of said railway company and himself, and for the uses and purposes therein set forth.

Also came Henry Crawford, Jr., secretary of the said railway company, and whose name is subscribed to the foregoing instrument, and acknowledg*ement* that he, in behalf of said railway company, signed and affixed to said instrument the official seal of said railway company as the free and voluntary act of the said Chicago and Great Southern Railway Company, for the uses and purposes therein set forth.

Witness my hand and official seal, at Chicago, Illinois, this 18th day of April, 1883.

HENRY MERSALBER,
Notary Public.

1637g STATE OF INDIANA, }
County of Clay, } *ss:*

The foregoing deed was filed for record in the recorder's office of Clay county on the 8th day of May, A. D. 1883, at 8 o'clock a. m., and duly recorded in book S of mortgages, on pages 121 to 130, inclusive.

Witness my hand and seal this 22d day of July, A. D. 1885.

[SEAL.] OWEN T. STARK,
Recorder of Clay County.

STATE OF INDIANA, }
County of Parke, } *ss:*

The foregoing deed was filed for record in the recorder's office of Parke county on the 28 day of April, A. D. 1883, at 9 o'clock a. m., and duly recorded in book 11 of mortgages, on pages 337 to 342, inclusive.

Witness my hand and seal this 11th day of June, A. D. 1885.

[SEAL.] HENRY B. CORD,
Recorder of Parke County.

1637*h* STATE OF INDIANA,
County of Fountain, } *ss:*

The foregoing deed was filed for record in the recorder's office of Fountain county on the 25th day of April, A. D. 1883, at 5 o'clock p. m., and duly recorded in book 12 of mortgages, on pages 374 to 378, inclusive.

Witness my hand and seal this 8 day of June, 1885.

[SEAL.] MURPHY LEWIS,
Recorder of Fountain County.

STATE OF INDIANA,
County of Warren, } *ss:*

The foregoing deed was filed for record in the recorder's office of Warren county on the — day of ——, A. D., 1885, at — o'clock — m., and duly recorded in book — of mortgages, in pages —.

Witness my hand and seal this — day of May, A. D., 1885.

—— ——,
Recorder of Warren County.

STATE OF INDIANA,
County of Benton, } *ss:*

The foregoing deed was filed for record in the recorder's office of Benton county on the — day of ——, A. D. 1883, at — o'clock — m., and duly recorded in book — of mortgages, on pages —.

Witness my hand and seal this — day of May, A. D. 1885.

—— ——,
Recorder of Benton County.

1637*i* STATE OF INDIANA,
County of Newton, } *ss:*

The foregoing deed was filed for record in the recorder's office of Newton county on the — day of ——, A. D. 1885, and duly recorded in book — of mortgages, on pages —.

Witness my hand and seal this — day of May, A. D 1885.

—— ——,
Recorder of Newton County.

1637*j* STATE OF INDIANA,
County of Jasper, } *ss:*

The foregoing deed was filed for record in the recorder's office of Jasper county on the — day of ——, A. D. 1883, at — o'clock — m., and duly recorded in book — of mortgages, on pages —.

Witness my hand and seal this — day of May, A. D. 1885.

—— ——,
Recorder of Jasper County.

1638 *Intervening Petition of the Pittsburgh Bessemer Steel Co., Limited, Pittsburgh, Pa.*

Before W. P. Fishback, master in chancery.

JAN. 8, 1886—2.00 o'clock p. m.

For petitioner, Edward Daniels, Esqr.; for respondent, R. B. F. Peirce, Esqr.

HORACE B. SMITH, being first duly sworn to testify the truth, the whole truth, and nothing but the truth relating to the matters at issue in the said cause, testifies as follows:

Direct examination:

Questions by Mr. DANIELS:

1 Q. Please state your name and residence.

A. Horace B. Smith; residence, Pittsburgh, Pa.

2 Q. What, if any, relation do you sustain to the intervenor, The Pittsburgh Bessemer Steel Co., Limited?

A. I am now their secretary and treasurer.

3 Q. Please state how long you have been connected with the Steel Co.

A. Since 1880—since its formation.

4 Q. What was your position in Sept., 1881, and how long did you continue to occupy such position?

A. I was business manager, and I occupied that position until the autum- of 1884.

1639 5 Q. If you have any knowledge of a contract made with the Chicago & Great Southern Railway Co. relative to the purchasing of steel rails by that company in Sept., 1881, you may so state.

A. In July or August we received a letter from a firm of brokers in Chicago, inquiring our price of 2,000 tons of rails. I do not think they mentioned the name of the purchaser at the inquiry, but later on it transpired that it was the Chicago & Great Southern Railroad Co. Some correspondence was had back and forth as to the price, and also about the freight, ending in their accepting the price we had named, which, I think, was $59.60, or the price that is stated in the contract, for 2,000 tons deliverable in November and December.

The intervenor offers in evidence the contract dated Chicago, Sep. 30, addressed to the Chicago and Great Southern Railway Co., signed by Shrader & Ellery, and confirmed by the Chicago and Great Southern Railway Co. It is marked Exhibit Smith number one, & is attached hereto.

The intervenor also offers in evidence the form of contract dated Chicago, Sep. 30, 1881, addressed to the Pittsburgh Bessemer Steel Co., Limited, Pittsburgh, signed Shrader & Ellery, and con-
1640 firmed by the Pittsburgh Bessemer Steel Co., Pittsburgh. It is marked Exhibit Smith number two, and is attached hereto.

6 Q. If, under that contract, the Pittsburgh Bessemer Steel Co. sent forward any rails, you may so state.

A. We shipped about 350 tons—I think a little over 350 tons—under the contract.

7 Q. In making the shipment, what was done about securing the payments?

A. We sent forward a draft through our bank, accompanied by the invoice of the rails and the inspector's certificate and other papers such as are described in the contract itself.

8 Q. That was upon the Chicago and Great Southern Railway Co. at Chicago?

A. Yes, sir.

9 Q. And what became of that draft?

A. That draft was returned protested.

10 Q. After the return of the draft to your company what, if anything, was done by your company with respect to the rails sent forward?

A. They were believed by us to be on the way to their destination, and we instructed the railroad Co. in whose hands we placed them—I think notified them in writing—not to deliver the rails.

11 Q. If after that time you met any of the officers of that company in conference about the rails, you may so state, with the
1641 result of the conference.

A. I went to Chicago after the draft was returned, and endeavored to see the officers of the company. The only one I saw was Mr. H. Crawford, Junior, who, I think, signed the contract. He said they had no means to pay for the rails, and could not tell when they would have. We were undecided as to what disposition to make of the rails. The railroad company claimed a large charge for the use of the cars while they were lying at the point of destination, as they had been instructed by us not to deliver them. I asked to have the freight charges, together with the freight bills, sent back to the Pittsburgh office of the Pennsylvania company. They did so, and after I returned home we paid the freight at Pittsburgh. While I was in Chicago I arranged with Mr. Conklin to unload the rails and take charge of them until such time as Mr. Crawford or the Chicago and Great Southern Railroad Co. should be able to pay for them. Mr. Conklin unloaded them, and sent me a receipt in the form of a storeage receipt. This is the original receipt which I hold in my hand which Mr. D. H. Conklin signed and sent me. This was after the rails had been unloaded and he had taken possession of them.

1642 The intervenor offers in evidence the paper just referred to by the witness, and it is marked Exhibit Smith number 3.

Witness continues: I will say that I understood from him that he could find a place to store the rails until Mr. Crawford would probably want to use them, and without charge—that is, he had found a place to pile them where they would be under his charge and supervision until such time as they were paid for.

12 Q. Who was Mr. D. H. Conklin?

A. He was introduced to me in Chicago and I cannot now recall by whom. I had one or two conversations with him about taking charge of the rails, and he agreed to do it.

13 Q. At the foot of the receipt of Mr. Conklin there is a pencil memorandum signed by H. B. Smith. You may state whether that was written by yourself.

A. Yes, sir: that is my handwriting.

14 Q. You may state when that was written.

A. The body of the receipt is also in my handwriting and it was written at the same time and by me forwarded to Mr. Conklin, signed by him and sent back to me. He gave me his address while in Chicago.

15 Q. Did you understand then that Mr. Conklin was in some way connected with the Chicago and Great Southern Railway Co.?

1643 A. No, sir; I did not understand that he had any connection with it whatever.

16 Q. What is the meaning of the language that he would "sign individually, and not as an agent *of* superintendent," in your memorandum?

A. I do not recall now why I wrote that, except, possibly, I understood—and I think I did understand—that he was a contractor or was the agent of the contractor, and that I wished the signature individually and not as agent of anybody.

17 Q. In the conversation had with him about his taking charge of the rails, you may state whether it was your understanding that he was to so take charge individually and not as an officer of the company or contractor.

A. Oh, yes; it was as an individual. That was distinctly understood; and while no sum was named as a compensation, I told him that when the matter was finally disposed of we should be very glad to pay any reasonable charge that he should see fit to make. I think he said that he would not charge much, or something like that. There was no sum fixed upon.

18 Q. How long did the rails remain in store in charge of Mr. Conklin?

A. I cannot tell you that.

19 Q. Were they in store on the 11th day of August, 1885, in

1644 charge of Mr. Conklin? That is the date of the filing of this petition.

A. No, sir; not to my belief.

20 Q. You may state what became of those rails after they had so been placed in store and receipted for by Mr. Conklin without specifying the date?

A. Mr. Conklin's son, on the occasion of one of my visits to Chicago, told me that they had been taken away from the track.

21 Q. Can you approximately state the date of that conversation?

A. I could not fix the date very clearly. It was some time in the summer or autumn of 1883.

22 Q. Was it 1882 or 1883?

A. Yes, it was in 1882. It was the same year in which the delivery was made. It was in Jan., 1882.

23 Q. If, after the rails had been so placed in the charge of Mr. Conklin, you had any conversation with Mr. Henry Crawford, the father of Mr. Henry Crawford, junior, about those rails, you may so state.

A. I saw Mr. Crawford several times in New York, twice I think, in St. James Hotel, and once at another, and probably more times than that. I made several trips to see him.

24 Q. I hand you a letter dated New York, March 30, 1882, and addressed to H. B. Smith, Esq'r, and signed by Henry Crawford. You may state whether you received that letter dated New York, St. James Hotel? 1645

A. This letter was received a day or two after an interview I had with Mr. Crawford at this hotel, in which I urged him to pay for the rails which were stored.

The intervener offers in evidence the letter before referred to by the witness, and it is marked Exhibit Smith number 4, and is attached hereto.

Objected to.

25 Q. In the contract of the Chicago & Great Southern Railroad Co., Exhibit number one, it is provided that the time of shipment shall be during Nov., 1881, 1,000 tons, and during Dec., 1881, 1,000 tons. If the rails were not shipped during the months of November and December, 1881, you may so state, giving the reason for such fact, if it is a fact.

A. Early in November, or possibly in October, we were notified that they were not ready to receive them or pay for them either. They said they would be ready in January.

26 Q. And were the 350 tons of rails that you have spoken of as having been sent forward to Goodland sent in January, 1882?

A. They were shipped in January, about the 10th day, to Goodland.

1646 27 Q. And were they there when you made this arrangement with Mr. Conklin about taking them in custody?

A. Yes, sir. The goods were shipped by the P. C. & St. L. to Goodland. They were shipped according to the terms of the contract. He had made arrangements for the rate of freight to Goodland. The contract provided for the manner of shipping them and, they were shipped to Goodland. We should have shipped the whole thousand tons except that the railroad Co. notified us that the cars were there and were not being unloaded.

28 Q. Now, if at any time Mr. Henry Crawford, Jr., admitted to you that the rails which were placed in charge of Mr. Conklin had been taken out of store and placed in the railroad track you may state.

A. In New York he admitted that they had been taken.

The respondent objects to the preceding question and answer.

The WITNESS: This conversation was probably later than March, 1882.

29 Q. If at any time you ordered Mr. Conklin to deliver the rails in his charge to the Chicago & Great Southern Railroad Co. you may so state.

A. No, sir; never. I supposed them to be in his charge at Goodland until we learned the contrary.

1647 30 Q. Were you the only officer of the steel Co. by whom such an order could have been given?

A. Yes. I was in sole charge of the business department of the company.

31 Q. State the amount that was due the steel Co. March 2, 1885.

A. This is a statement prepared in the handwriting of my bookkeeper, and also myself in connection with him, going through our books and collecting these various charges for freight, loading, unloading, protest fees, interest, etc., showing a debit of $16,291.65.

Intervenor offers said statement in evidence and it is marked Exhibit Smith No. 5, and is attached hereto.

32 Q. You may give the date of the first item of credit stated in that account.

A. May 10, 1883.

33 Q. You may state whether the money shown by that credit was received after you had been advised that the rails had been placed in the railroad track.

A. Yes; it was after we had been advised that they had been used. The amount of the credit is $8,000.

34 Q. What is the next item of credit?

A. Sept. 8, 1883, $2,000.

By Mr. PIERCE:

35 Q. Are those all the payments that have been made?

A. Yes, sir.

1648 36 Q. Does that include all the payments?

A. Yes, sir; with the interest on both sides, both debit and credit.

By Mr. DANIELS:

37 Q. If, in any conversation with Mr. Henry Crawford, Sr., had after the rails had been put in charge of Mr. Conklin, Mr. Crawford admitted to you that he was cognizant of such fact and acquiesced in it, you may so state, giving, as near as may be, the date of such conversation and the place.

Objected to by respondent.

A. I advised him when I saw him in New York, the first time I saw him after the rails were put in Mr. Conklin's charge, that we had done so, which he said was perfectly satisfactory.

38 Q. And that conversation was before the date of that letter—that is, before March 30, was it?

A. It was after the rails were unloaded, about the middle of January, about a week after they had arrived at Goodland, and I think I went directly, or almost directly, to New York and told Mr. Crawford what had been done, and asked him if it was satisfactory, and he said perfectly so, and that they could remain there until they were paid for.

39 Q. Were those rails sent forward to Goodland at the time of their being placed in the charge of Mr. Conklin reasonably worth $59.60 per ton?

1649 A. They were; yes, sir.

Cross-examination:

Questions by Mr. Pierce:

40 Q. That was the marked price of steel rails at that time?

A. Yes, sir.

41 Q. That was the current price in the trade?

A. Yes, sir. Possibly the price had declined a little at the time of delivery.

42 Q. But at the time the contract was made was that the price?

A. Oh, yes; it was a low price. As a matter of fact, it was the lowest bid these gentlemen had. They asked four or five steel mills for their prices, and the broker afterward told me it was the lowest price they had obtained.

43 Q. You never had any conversation with Mr. Crawford, or any of the officers of the railroad Co., about this contract until after it was made?

A. No, sir.

44 Q. It was made wholly through these brokers?

A. Wholly.

45 Q. Is the name of the firm Shrader & Ellery?

A. Yes, sir.

46 Q. Do you know which one of these men did the business?

A. No, I could not identify the handwriting; I met both of them when I was there.

1650 47 Q. Did you have anybody else in business with them?

A. I think not.

48 Q. It was one or the other of those gentlemen, or both of them, that you dealt with?

A. Yes, sir.

49 Q. This contract provides that one thousand tons shall be delivered during November and one thousand tons during December, 1881. Did you have the steel made at that time ready for delivery?

A. Yes, sir.

50 Q. You could have delivered the steel according to the terms of this contract?

A. We made somewhere from 1,300 to 1,500 tons ready in November, and we were prepared to ship at any time after that.

51 Q. What is the reason you say you did not ship during November and December?

A. We received a request from these brokers to defer delivery during January.

52 Q. So, in accordance with that notice which you received from the brokers, you deferred delivering the rails until what time?

A. I think the first shipment was made the first week in January—along about the 6th or 8th—somewhere from the 6th to the 12th.

53 Q. This bill would show, would it not? Jan. 10th is the first item there.

A. Yes, sir; that is correct.

1651 54 Q. How did you say the bills were to be collected? You said you sent a draft along with the bills.

A. The contract provides that the rails were to be paid for by sight draft with exchange on New York, accompanied with the bill of lading and inspector's certificate.

55 Q. It seems there were two shipments, one on the 10th and one on the 12th, making altogether 356 tons. At what time did that steel reach Goodland—have you any idea?

A. I do not know that I can say possitively; I think within three or four days—along there.

55 Q. And it was probably the middle or the latter part of January, 1882, when these rails were delivered at Goodland, or ready for delivery?

A. I think it was sooner than that, from this fact: before we received word that the draft was protested the railroad Co. had notified us that a number of car-loads had reached Goodland and had not been unloaded or the freight paid on them.

56 Q. You would not make the draft until the shipments were made, would you? You probably made the draft at the same time you made the shipment?

A. As soon as the bill of lading was made.

57 Q. And you would make the charge or entry on the books at the date of the shipment?

A. Yes; on the date of the last shipment.

1652 58 Q. The first shipment was Jan. 10th, the other Jan. 12th—they were two days apart?

A. Yes, sir; we got notice from our works, which are ten miles up the river, of each day's shipments, consisting of three or four or five cars, as the case may be. The railroad Co. prefer to make out their formal bills of lading in large lots, and for their convenience we fill out bills of lading with the shipments of several days added together. We get a temporary bill of lading, as we call it, from the agent of our works. We get this temporary bill of lading, or three or four of them, for a few days and present them to the railroad agent in the city of Pittsburgh, and he gives us a bill of lading for from three to five hundred or such quantity as we can conveniently aggregate at one time. For instance, in this case the cars which we shipped over the Panhandle road were not furnished promptly. We expected to load 500 tons and invoiced 500 tons and made a draft for that quantity, as the contract provides. But the railroad company not furnishing us cars enough we were unable to do that, so

A. It was after the rails were unloaded, about the middle of January, about a week after they had arrived at Goodland, and I think I went directly, or almost directly, to New York and told Mr. Crawford what had been done, and asked him if it was satisfactory, and he said perfectly so, and that they could remain there until they were paid for.

39 Q. Were those rails sent forward to Goodland at the time of their being placed in the charge of Mr. Conklin reasonably worth $59.60 per ton?

1649 A. They were; yes, sir.

Cross-examination:

Questions by Mr. PIERCE:

40 Q. That was the marked price of steel rails at that time?

A. Yes, sir.

41 Q. That was the current price in the trade?

A. Yes, sir. Possibly the price had declined a little at the time of delivery.

42 Q. But at the time the contract was made was that the price?

A. Oh, yes; it was a low price. As a matter of fact, it was the lowest bid these gentlemen had. They asked four or five steel mills for their prices, and the broker afterward told me it was the lowest price they had obtained.

43 Q. You never had any conversation with Mr. Crawford, or any of the officers of the railroad Co., about this contract until after it was made?

A. No, sir.

44 Q. It was made wholly through these brokers?

A. Wholly.

45 Q. Is the name of the firm Shrader & Ellery?

A. Yes, sir.

46 Q. Do you know which one of these men did the business?

A. No, I could not identify the handwriting; I met both of them when I was there.

1650 47 Q. Did you have anybody else in business with them?

A. I think not.

48 Q. It was one or the other of those gentlemen, or both of them, that you dealt with?

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1652 58 Q. The first shipment was Jan. 10th, the other Jan. 12th—they were two days apart?

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that, after he had shipped a certain number of cars and receiving no more on which to load these rails, we decided not to wait longer, but to invoice those and send forward the invoice and bill of lading
and inspector's certificate, together with the draft, which we
1653 did; and that was why we accounted for those shipments of
356 tons instead of 500.

59 Q. When you did that what was the date of the shipments?

A. I am confident our books would show that the shipments commenced three or four days previous to the 10th of January.

60 Q. It would take four or five or six days to get the iron down there; so it was about the middle of January probably before it reached Goodland, was it?

A. I hardly think it would be so long as that.

61 Q. Who was the iron consigned to? Was it consigned to the Chicago and Great Southern Railway Co.?

A. No, sir; I think it was consigned to ourselves.

62 Q. Consigned to yourselves at Goodland?

A. Yes, sir; to ourselves.

63 Q. And your draft came back protested and then you went at once to Chicago to see about it?

A. Yes, sir.

64 Q. And do you remember what the date of your trip to Chicago was?

A. I could not fix the time; no, sir. It was within a very few days I know. It was at the time the rails were unloaded.

65 Q. When did you pay the freight; before you went back home or afterwards?

A. Afterward. I made arrangements while I was in Chi-
1654 cago and sent it back to Pittsburgh.

66 Q. It seems from this statement the freight was paid on the first of February; that is probably correct, is it?

A. Yes, sir.

67 Q. Then, when you found this draft came back protested, you had not delivered the rails; they were then probably lying there at Goodland subject to your order?

A. Yes, sir; the bill of lading was indorsed and we shipped the rails to ourselves, and we indorsed it over to the Chicago and Great Southern Railway Co. and attached it to the draft, and that was the usual way in which it was done; we placed the bill of lading probably in the hands of the conductor.

68 Q. When you got to Chicago you went to the railroad office to see about it and found nobody there but the secretary of the company, Crawford, Junior?

A. That is what he said he was.

69 Q. Did you talk with other officers of the company?

A. There were two or three gentlemen there who seemed to be familiar with the affairs of the company.

70 Q. Did you meet Mr. Stearns?

A. Not to know him.

71 Q. The president of the company—the president afterwards—not at that time?

A. No, sir; not to know him.

1655 72 Q. Mr. Crawford told you that they had not the money to pay for the rails, and he did not know how soon they would have?

A. He told me that.

73 Q. You do not know who introduced you to Mr. Conklin?

A. No, sir; I could not recall who it was; my recollection is it was one of these brokers, but I cannot recollect who it was.

74 Q. Did you consult Mr. Jewett at that time, your attorney?

A. No, sir; I did not.

75 Q. It is your impression it was one of those brokers who introduced you to Mr. Conklin?

A. Yes; but I could not be positive.

76 Q. Mr. Conklin was there in Chicago?

A. Yes, sir.

77 Q. You did not have to send for him, but he was there in the city?

A. Yes, sir; he was there in the city, and, I think, he came to the hotel to see me; he had spoken to some of those gentlemen about it; I do not know which one.

78 Q. He told you he thought there was a good place there at Goodland where he could store this iron?

A. He said he could store it there, he thought, without any expense to us.

79 Q. You employed him to take charge of this iron to see that it was unloaded, stored, and properly cared for, promising
1656 to pay him whatever would be right for it?

A. Yes, sir.

80 Q. When did you write this receipt—while you were there or after you went home?

A. After I went home.

81 Q. And you sent it out to Mr. Conklin to sign?

A. Yes, sir.

82 Q. And at the same time you drew this receipt and sent it to him for his signature you put this pencil memorandum down below for Mr. Conklin to sign individually and not as agent or superintendent?

A. Yes, sir.

83 Q. When you sent that receipt you did not want him to sign it as superintendent of the railroad company, but you wanted him to sign it individually, so that he should be your man there and not the railroad company's?

A. Yes, sir; that is it; I did not understand he was in the employ of any railroad. My recollection is he was introduced to me or recommended to me as a contractor or builder of railroads, or something of that kind.

84 Q. And you wanted him to sign this receipt as your man—as your agent—and not the agent of any railroad or anybody else?

A. Yes, sir.

1657 85 Q. And so you put this iron in his charge to take care of it for you as your agent?

A. Yes, sir.

86 Q. When did you first get notice that the iron had gone into the track?

A. I could not fix the date very clearly.

87 Q. There is no means of refreshing your memory about that?

A. I looked for any memorandum that would do that, but I could not find any. I could only say it was some time in the summer or fall of 1882.

88 Q. You saw Mr. Crawford there two or three times in New York?

A. Several times; it might have been half a dozen or more probably.

89 Q. Did you go to him as an officer of the company or as a contractor building roads?

A. As an officer of the company. I did not know that he was a contractor at all until to-day.

90 Q. He did not sign this New York letter as an officer of the company?

A. No, sir; he never told me he was building a road.

92 Q. What you went to see him about was what arrangements could be made about getting the money on this contract, and after two or three conversations with him he finally wrote you this letter, did he?

A. Yes, sir.

1658 93 Q. And you then rested content to have the iron stored in charge of Mr. Conklin?

A. Yes, sir.

94 Q. This letter contained an agreement that he would reimburse the steel Co. for any outlay or the cost of carrying the iron.

A. He promised verbally to do what he promises there in writing, and of course I wanted something more tangible.

95 Q. That took place on the 30th of March, 1882, in New York, at the time this letter was written?

A. No, sir; it was before that.

96 Q. Was this directed to you at Pittsburgh or New York?

A. At Pittsburgh. The conversation in which he promised to send me such a letter was a week or ten days previously, in New York city.

97 Q. After you got this letter you rested comparatively easy, did you, or did you still stir the company up?

A. We still kept writing them to pay for the rails—writing the railroad company and writing to their brokers also, asking when they would be able to pay for them. We claimed that as we had rolled the rails and stored them, they should pay for them whether they took them or not.

98 Q. What is your recollection about when you first got notice that these rails had gone into the track? About what time in the summer of 1882?

1659 A. I could not fix the date possibly.

99 Q. Do you know from whom you first got that word?

A. I do not know that I could tell you that.

100 Q. How was this first payment of $8,000 made?

A. Through our attorneys, Jewett's firm, in Chicago.

101 Q. Was the $2,000 paid in the same way?

A. In the same way. As soon as we learned the rails had been taken or stolen we put it in the hands of Jewett, and all the payments were made to him.

102 Q. These payments were both made after you had learned in fact that the rails had gone into the tracks?

A. Yes, sir.

103 Q. These two payments are all you have got?

A. Yes, sir.

104 Q. $2,000 and $8,000—you received $10,000 did you not?

A. Yes, sir.

105 Q. Did Mr. Conklin say anything to you about the rails going into the tracks?

A. I never saw Mr. Conklin since; I wrote to him several times, but never got any reply.

106 Q. You never went down to Goodland yourself?

A. No, sir.

Re-direct examination by Mr. Daniels:

1660 107 Q. State if at any time you ordered Mr. Conklin to deliver the rails to the railroad company, or if at any time you consented to the delivery of the rails or the removal of the rails from storage at Goodland.

A. No, sir, I never did; if we had had the slightest idea that they were not there subject to our order we should have taken them away.

The intervenor offers in evidence a carbon copy of the letter, dated —— ——, addressed to —— ——, the original of which the witness states was signed by John M. Jewett, and was served by him on H. B. Porter on or about the day of the date of that letter. It is marked Ex. Smith No. 6.

Contract.

Shrader & Ellery, Chicago.

Chicago, 30 *Sept.*, 1881.

Chicago & G't Southern R. R. Co., 125 Dearborn St., Chicago.

Dear Sirs: We have to-day bought for your account from Pittsburgh Bessemer Steel Co., Limited, a lot of steel rails on the following conditions, viz:

Quantity.—Two thousand tons.

Brand or make.—Pittsburgh Bessemer Steel Co. make.

Quality.—Best.

Price.—$59.60—fifty-nine dollars sixty cents per ton, 2,240 lbs., f. o. b. works.

1661 Terms of payment.—Cash on delivery of bills lading; inspector's certif. for each 500 tons as fast as shipped, by sight draft, with exchange on New York, with B. L. & ins. cer.

Place of delivery.—F. o. b. works, at Pittsburgh.

Time of shipment.—One thousand tons during November, one thousand tons during December, 1881.

Shipping directions.—Rails to be shipped per Pennsyl. Company to Goodland, Indiana.

Note.—Rails to be 52 lbs. per yard weight; 90% to be of 30 feet length, with not over 10% of shorter lenth, and to diminish by 1 ft. differences; second quality rails, not exceeding 5%, to be taken at 10% reduction; inspector at the mill at the expense of the purchaser.

Yours truly, SHRADER & ELLERY.

We confirm your action on our behalf, as expressed in the above contract, and accept the same as binding on us in every respect set forth.

Oct. 3, 1881.

CHICAGO & G'T SOUTHERN R'Y.
By H. CRAWFORD, Jr., *Sec.*

Correct since interlineation. H. CRAWFORD.

Exhibit Smith No. 1.

Contract.

Shrader & Ellery, Chicago.

Chicago, 30 *Sept.*, 1881.

Messrs. Pittsburgh Bessemer Steel Co., Limited, Pittsburgh, Pa.

1662 Dear Sirs: We have to-day sold for your account to the Chicago & Great Southern R'y Co. a lot of steel rails on the following condition, viz:

Quantity.—Two thousand tons.

Brand on make.—Pittsburgh Bessemer Steel Co. make.

Price.—$59.60 (fifty-nine dollars sixty cents) per ton, 2,240 lbs., f. o. b. works.

Terms of payment.—Cash on delivery of bills lading; inspector's certificate for each 500 tons as fast asshipped, by sight draft, with exchange on N. Y., with B. L. & ins. cer.

Place of delivery.—F. o. b. works, at Pittsburgh.

Time of shipment.—One thousand tons during November, one thousand tons during December, 1881.

Shipping directions.—Rails to be shipped per Pennsylvania Company to Goodland, Indiana.

Note.—Rails to be 52 lbs. per yard weight; 90% to be of 30 ft. length, with not over 10% of shorter length, and to diminish by 1 ft. difference; second quality rails, not exceeding 5%, to be taken at 10% reduction; inspection at the mill at the expense of the purchaser.

Yours truly, SCHRADER & ELLERY.

Exhibit Smith No. 2.

We confirm your action on our behalf as expressed in the above contract, and accept the same as binding on us in every respect as set forth.

Oct. 3, 1881.

[SEAL.] PITTSBURGH BESSEMER STEEL CO.,
LIMITED.

1663 **The Pittsburgh Bessemer Steel Co., Limited.**

GOODLAND, IND., *Jan'y*, 1882.

Received of Pittsburgh Bessemer Steel Co., Limited, 20 cars rails, being about 357 tons, which I hereby agree to hold subject to their order.

D. H. CONKLIN.

(Pencil memorandum.)

"Will Mr. Conklin kindly sign this individually, and not as ag't or sup't, & much oblige—

"H. P. SMITH."

Exhibit Smith No. 3.

St. James Hotel, Broadway & 26th St., N. Y.

NEW YORK, *March* 30, '82.

H. P. Smith, Esqr.

DEAR SIR: Referring to the purchase by the Chicago & Great Southern Railway Company of 2,000 tons steel rails from the Bessemer Steel Co. (Limited) of Pittsburgh, I herewith desire to confirm what I have stated to you orally, viz., that the railway company, in consideration of your company agreeing to delay the delivery of the rails later than the contract date and for the convenience of the purchaser, engages to pay the steel company, in addition to the contract price, the expenses which the steel Co. are subjected to for carrying and storing the property until delivery.

1664 From the shape my present negotiations are taking, I have no doubt but I shall be able to receive and pay for the rails in about equal amounts in April and May.

Yours, very truly, HENRY CRAWFORD.

Exhibit Smith No. 4.

Chicago & Great Southern Railroad Co., Chicago, Ill., in account with the Pittsburgh Bessiner Steel Co., Limited, branch office No. 87 Wood street.

1882.					
Jan'y	10.	To 303.1960 tons 52-lb. rails × 59.60 =	18,119 95	Int. 3 y'rs 1 mo. 16 days, @ 6 %...	3,404 86
"	12.	" 53.1400 " " " × " =	3,196 05	" 3 " 1 " 16 " " ...	599 79
"	31.	" loading & unloading rails............	43 60	" 3 " 1 " 6 " " ...	7 96
Feb'y	1.	" freight paid..............................	1,594 20	" 3 " 0 " 27 " " ...	294 13
"	28.	" traveling expenses of H. P. Smith	66 15	" 3 " 0 " 0 " " ...	11 91
April	11.	" protest fees..............................	2 82	" 2 " 10 " 19 " " ...	50
			23,013 17		4,319 15
1885.					
March	1.	To interest per margin	4,319 15		
					$27,332 32

CR.

1883.					
May	10.	By cash..............................	8,000 00	Int. 1 y'r 9 mo. 18 days, @ 6 %	864 00
Sept.	8.	" do.	2,000 00	" 1 " 5 " 20 " "	176 67
			10,000 00		1,040 67
1885.					
March	1.	To interest per margin ...	1,040 67		
					$11,040 67
					$16,291 65

Exhibit Smith No. 5.

1665 Room 10 Reaper Block, 97 Clark Street.

CHICAGO, *April 22nd*, 1884.

Mr. Henry H. Porter, Portland Block, city.

DEAR SIR: As attorneys for the Pittsburgh Bessemer Steel Company (Limited) of Pittsburgh, Pa., I desire to notify you, and do hereby give you notice, that that company holds a claim against the Chicago & Great Southern Railway Company for damages for the non-fulfillment of a contract for the purchase of rails made between said Pittsburgh Bessemer Steel Co. and the Chicago & Great Southern Railway Co., dated on the 30th day of September, 1881, and accepted by the said railway company on the 3d day of October, 1881, which contract was for the purchase of two thousand tons of steel rails, one thousand tons to be shipped in November and the other one thousand tons in December, 1881, the rails to be fifty-two pounds per yard weight, and the price to be fifty-nine dollars and sixty cents per ton of twenty-two hundred and forty pounds, to be delivered at the works of the Pittsburgh Company. Of this two thousand tons sixteen hundred and forty-three tons were not taken by the Chicago & Great Southern road, though the Pittsburgh Company was and has been always ready to deliver the same according to the contract. And we claim as damages for the non-fulfillment of the contract as to the sixteen hundred and forty-three tons the sum of twelve thousand nine hundred and seventy-nine dollars and seventy
1666 cents. In addition to this claim our client has a claim for the balance due and unpaid upon the four hundred and fifty-seven tons which were taken, and on which there has been paid on behalf of the Chicago & Great Southern Railway Company, by Mr. Henry Crawford, the sum of ten thousand dollars, the balance remaining due being altogether, with interest thereupon not included, the sum of fourteen thousand six hundred and sixteen dollars and twenty-five cents, the total sum claimed by our client being twenty-seven thousand and five hundred and ninety-five dollars and ninety-five cents, together with interest upon the various items making up said sum from the dates when the same respectively became due and payable.

This claim has not been put in judgment against the said railroad company nor against Mr. Crawford, its principal officer, but the claim has not been disputed by the company, and Mr. Crawford has paid upon the original claim, of which the above-named sum is the balance, the sum of ten thousand dollars.

We serve you with this notice acting upon information received from Mr. Crawford and yourself to the effect that you and your associates may purchase the property and assets of the said Chicago & Great Southern railway, and in case such purchase is made we desire the purchaser to be affected with the same notice and knowledge of the claim of our client, as above set forth, as though the same were already in judgment.

1667 Sincerely yours,

JEWETT, NORTON & LOENARD.

Attorneys for Pittsburgh Bessemer Steel Company (Limited.)

Ex. Smith No. 6.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

Walter C. Loenard, being first duly sworn, deposes and says that he personally prepared the notice a copy of which is hereto attached, and caused the same to be served upon Henry H. Porter by leaving the same, signed "Jewett, Norton & Loenard," who were then the attorneys of the Pittsburgh Bessemer Steel Company (Limited) at his office, in the city of Chicago, at or about the date thereof. Affiant also states that he had frequent conversations with said Porter respecting the subject-matter of said notice, and therein fully explained the claims of the said Pittsburgh Bessemer Steel Company (Limited) referred to in said notice.

WALTER C. LOENARD.

Subscribed & sworn to before me this 8th day of February, 1886.
[SEAL.] EDWARD R. JEWETT,
Notary Public.

1668 In the Matter of the Intervening Petition of VOLNEY Q. IRWIN.

Before the Honorable W. P. Fishback, master in chancery, in Indianapolis, Indiana, Apr. 19, 1886—a. m.

Appearances: For intervenor, P. S. Kennedy, Esq.; for respondents, R. B. F. Peirce, Esq.

SAMUEL D. SMITH, being first duly sworn according to law, testifies as follows:

Direct examination:

Questions by Mr. KENNEDY:

1 Q. State your full name.

A. Samuel D. Smith.

2 Q. State what knowledge you have as to the work done by Irwin as a contractor on the Chicago & Great Southern railway between Oxford and what is known as Independence grade.

A. I met Mr. Irwin there at the time and made a contract to do the work under Mr. Irwin, and at the same time contracted for five miles' work myself, and commenced the work, I think, about the 15th or 16th of Nov., 1881, I think it was.

3 Q. Where did you commence the work?

1669 A. I commenced the work right south of Oxford, in Benton county, where the former company had left off their work. I commenced the grade right there.

Cross-examination:

Questions by Mr. PEIRCE:

4 Q. You had a subcontract under Mr. Irwin?

A. Yes, sir.

5 Q. Have you any means of fixing the time definitely, or have you a mere impression as to the time?

A. The way I fix the time is this: The contract was made with the company by Mr. Irwin on the 9th Nov. He came back to Crawfordsville and I went back, and just two days after that we commenced the work. I do not think it was more than three or four days at the most. After that we commenced the work because the work was to be commenced shortly after the contract was made. He urged me to go; I did not want to go then. I do not think it was later than the 15th or 16th of the month.

6 Q. What was it you began to do?

A. To grub and grade.

Witness fees for this witness	$1 50
Milage, 44 miles	4 40

Volney Q. Irwin, being duly sworn according to law, testifies as follows:

1670 Direct examination:

Questions by Mr. Kennedy:

1 [Q.] State your full name.

A. Volney Q. Irwin.

2 Q. State what part of the Chicago & Great Southern Railroad you built as contractor.

A. I built from about 1,500 feet south of the Lake Erie & Western crossing to what is called Independence grade in Warren county.

3 Q. How many miles?

A. I suppose 15 or 16; I do not know the exact number.

4 Q. When did you commence the work?

A. About the middle of Nov., 1881; I made the contract on the 9th.

By Mr. Peirce:

5 Q. That is as near as you can fix the date—about the middle of Nov.?

A. Yes, sir; it was about the 15th, 16th, or 17th—along there. I think we began about on the 17th. I put it down on a memorandum-book in which I keep a detailed account of everything I do.

By Mr. Kennedy:

6 Q. You may state from your memorandum-book what the date was.

A. (Referring to memorandum-book.) I put down on my memorandum-book, "Commenced work on the 17th of November, 1881."

By the Master:

7 Q. You made that memoradum at the time the work was done?

A. Yes, sir. Here I say, "Signed contract with railroad"—that
is on the 9th—and here, "Began work to-day on the railroad—
1671 that is Nov. 17th, 1881.

By Mr. PEIRCE:

8 Q. Do you remember what work was done that day there?

A. Grading and grubbing and clearing; Mr. Smith began the work.

Adjourned until 2 p. m.

Afternoon session, 2 o'clock.

Respondents object to proceeding further with this case, and increasing costs until the intervenor has filed the cost bond, and they request the master to certify the question as to security for costs to the court.

Upon the hearing this afternoon the response to the intervening petition which had been filed in court was exhibited to counsel for the intervenors, and they objected to the consideration of the same in this proceeding, because the answer has been filed since the order of reference to the master, and because it is now too late to present it.

The intervenor offers in evidence the record in the case of Irwin against the Chicago & Great Southern Railway Co., transcribed from the Warren circuit court records, which is marked Irwin Exhibit A and is attached hereto.

1672 The bondholders make no objection to the admissability of the record in evidence; and they further state that they will not offer any evidence to contradict the sum decreed in that record as being the true amount due from the railroad company to the said Irwin, on the date of said decree.

VOLNEY Q. IRWIN recalled:

Questions by Mr. PEIRCE:

9 Q. You are the Volney Q. Irwin whose claim is now being heard?

A. I am.

10 Q. I will ask you if you had an order of sale issued under the decree you took in the Warren circuit court against the Chicago & Great Southern Railway Co.?

A. Yes, sir.

11 Q. I will ask you if you have bid in the railroad in the county of Warren under that decree?

A. Yes, sir.

12 Q. Is that the certificate of sale which I now show you?

A. Yes, sir.

The respondents offer in evidence said certificate of sale which is marked Exhibit Irwin B, and is attached hereto.

The intervenors rest.

AUG. 14, 1886.

1673 VOLNEY Q. IRWIN: The R. R. Co. had not secured right of way along the line of my work when I began. They had condemned some, but it had not been settled when I began. They had not even secured right of way when I was done. I had trouble all along the line for right of way.

Mr. Pierce, for respondents, objects to evidence as incompetent and irrelevant.

Afterwards, at Indianapolis, Ind., H. Crawford appearing for the respondent before the master, introduced in evidence a certified copy of the certificate of redemption in the claim above entitled. Said paper is attached hereto and is marked Exhibit Irwin "C."

EXHIBIT IRWIN "B."

Sheriff's Certificate of Sale.

I, Joseph L. Stump, sheriff of Warren county, in the State of Indiana, certify that I have this day sold by virtue of an order of sale to me directed from the clerk of the circuit court of Warren county, Indiana, issued on the 13th day of June, 1884, in a case wherein Volney Q. Irwin was plaintiff and the Chicago & Great Southern Railway Company was defendant, wherein judgment was rendered on the 12th day of April, 1884, for the sum of eleven thousand eight hundred & fifteen dollars and seventy cents, principal and interest to date of judgment, and the further sum of
1674 twenty dollars and seventy cents, costs accured to that date,
upon which there has accrued one hundred and seventy-nine dollars and twenty cents interest, and thirty dollars and twenty cents costs, making in all eleven thousand nine hundred and ninety-four dollars and ninety cents, principal and interest, and fifty dollars and ninety cents, cost to date of sale, making the total amount due twelve thousand and forty-five dollars and eighty cents; and the said Joseph L. Stump, as sheriff aforesaid, advertised for sale, according to law, the following-described real estate, as property of the Chicago and Great Southern Railway Company on the 19th day of June, 1884, to wit: All of the defendants' railway from the point where it intersects the county line between the counties of Warren and Benton, in the State of Indiana, to a point in Warren township, in Warren county, Indiana, where the line of said railroad crosses what is known as the Independence grade, all in Warren county, Indiana.

And said sale was set for the 12th day of July, 1884, and the said Joseph L. Stump, sheriff as aforesaid, did upon said day, between the hours prescribed by law, at the door of the court-house of Warren county, offer for sale at public auction, the rents and profits of said real estate for a term not exceeding seven years, and having received no bid therefor, he did then and there offer for sale at public auction the fee-simple of said real estate, and Volney Q.
1675 Irwin having bid the sum of five hundred dollars and no
person bidding more, the same was, in due form, openly struck off to the said Volney Q. Irwin, he being the highest and best bidder therefor, and that being the highest and best price bid for the same; and the said Volney Q. Irwin paid the amount so bid by him.

The aforesaid certificate will entitle the said Volney Q. Irwin, the purchaser of said real estate as aforesaid, to a deed in fee-simple to said premises in one year from the day of sale, if the same is not redeemed by the defendant or any other person entitled thereto paying the purchase-money, with interest at eight per centum per annum, before the expiration of one year from day of sale aforesaid.

July 12th, 1884.

JOSEPH S. STUMP,
Sheriff Warren County.

EXHIBIT IRWIN "A."

STATE OF INDIANA, } *ss:*
Warren County, }

Pleas of the Warren circuit court, held at at the court-house in the
town of Williamsport, begun and held on Monday, June 16th, 1884,
the said day being the third Monday in said month and
1676 the time fixed by law for a term of said court, before the
Hon. Joseph M. Robb, judge [of] aforesaid court.

VOLNEY Q. IRWIN
vs. } 2947.
THE CHICAGO & GREAT SOUTHERN RAILWAY COMPANY.

Be it remembered that on the 23rd day of October, 1883, there was filed in the Warren circuit court a complaint in this behalf, which said complaint reads as follows, to wit:

STATE OF INDIANA, } *ss:*
Warren County, }

In the Warren Circuit Court. September Term, 1883.

VOLNEY Q. IRWIN
vs.
THE CHICAGO & GREAT SOUTHERN RAILWAY COMPANY.

The plaintiff, Volney Q. Irwin, complains of the said Chicago and
Great Southern Railway Company, the defendant, and says that on
the 9th day of November, 1881, said plaintiff and said defendant
entered into and executed a written contract, a copy of which is filed
herewith, marked Exhibit "A," and made a part of this complainant, by which said written contract said defendant employed
1677 this plaintiff to do all the embanking, to make all the excavations, to do all the cleaning and grubbing on that part of
defendant's road between the town of Oxford, in Benton county,
Indiana, and what is known as Independence grade, in Warren
county, Indiana, at the following prices, to wit: For cleaning and
grubbing, $25 per acre; for excavating and embanking, 16 cents per
cubic yard.

And plaintiff says he performed work under said contract for the defendant as follows, to wit: That he removed 350,000 cubic yards of earth and cleared and grubbed forty acres of land; that the said work done in embanking and excavating, at 16 cents a cubic yard, amounts to $56,000; that the grubbing and cleaning, at $25 per acre, amounts to $1,000; that the whole of said work amounts to the sum of $57,000; and plaintiff says that he in all things performed his

said contract and did the work above specified as he was directed by the defendant's civil engineer; and he says that said sum of $57,000 is now due and unpaid; and plaintiff says that before said road of the defendant's was all finis-ed and in operation and within
1678 sixty days from the time he completed said work he filed in the office of the recorder of Warren & Benton countys, Indiana, where said work was done, a written notice of his intention to hold a lien on that part of defendant's road upon which he did the aforesaid work, a copy of which is filed herewith and marked Exhibit "B," and made a part hereof; and plaintiff further says that he has contracted with Kennedy and Kenndy and —— to foreclose said lien on said work, and agreed to pay them a reasonable fee for said services, and that a reasonable fee for the same would be $—. Wherefore plaintiff demands judgment for $57,000 for said work, $— for said attorneys' fees and the foreclosure of said lien and a decree for the sale of all that part of defendant's road described in plaintiff's aforesaid notice of lien and all other proper relief to which he may be entitled in the premises.

KENNEDY & KENNEDY,
Att'ys for Pl'ff.

Chicago & Great Southern Railway Company.

This agreement, made and entered into this first day of November, A. D. one thousand eight hundred and eighty-one, by and between V. Q. Irwin, of Crawfordsville, State of Indiana, party of the first part, and the Chicago & Great Southern Railway Company, party of the second part, witnesseth: That for and in consid-
1679 eration of the payments and covenants hereinafter mentioned to be performed and fulfilled by the party of the second part, said party of the first part does hereby agree and bind himself, his heirs and executors and administrators, to perform all the labor and furnish all the materials necessary to fully complete, in the most substantial and workmanlike manner, and to the satisfaction and acceptance of the engineer of the company, the cleaning and grubbing, grading, including side tracks and depot grounds, ditching, changing of streams and highways, together with such other work as may be required by the engineer of the party of the second part, to prepare the road-bed and structures for the reception of the ties and rails on that portion of the line of [the] Chicago and Great Southern railway commencing at or near Oxford, in Oak Grove township, Reuben county, and terminating at the Independence grade, in Warren township, Warren Co., Indiana, according to the directions of said engineer and the annexed specifications and the following conditions, viz:

First. That the work shall be commenced within 10 days after the execution of this contract, and shall be fully completed, in accordance with the terms of this contract, on or before the first day of January, 1882, with a reasonable allowance of time beyond that date for bad weather.

1680 Second. That said work shall be, in all particulars, made to conform to the plans, specifications, and directions of the chief engineer and the engineer in charge of the work, by whose measurements and calculations the quantities and amounts of the several kinds of work performed under this contract shall be determined, and who shall have full power to reject and condem all work on materials which, in his opinion, do not conform to the spirit of this agreement, and shall decide every question which may or can arise between the parties relative to the execution thereof, and his decision shall be conclusive and binding upon both parties hereto, and no right of action shall arise hereon, except upon and after such an award by said engineer.

Third. The several stipulations of this contract shall be performed in such manner that the party of the first part shall not be relieved from the immediate charge and responsibility of the work, and no part thereof shall be transferred or sublet to other parties, unless by the sanction and approval in writing of said second party or their engineer.

Fourth. If any foreman or laborer employed by the contractor shall, in the opinion of the engineer, execute his work in an unfaithful or unskillful manner, or in any respects prove remiss 1681 or inadequate to the performance of his duty, or disrespectful or riotous in his conduct, he shall forthwith, by direction of the engineer, be discharged, and no person shall be employed on the work in the capacity of foreman or overseer who has been previously discharged for either or any of the above reasons.

Fifth. If any damage shall be done or permitted by the party of the first part, or by workmen in his employ, to the owners or occupants of land or other property adjoining, or in the vicinity of the work herein contracted to be done, the engineer shall have the right to estimate the amount of such damage and to pay the same to such owner or occupant, and the amount so paid shall be deducted from the value of the work done under this contract.

Sixth. The said party of the first part further agree not to keep, or suffer to be kept or used, any ardent spirits in any house or tenement built or occupied by him or any workman in his employ, or *or* any boarding-house keeper under him, on or near said work, and to discharge from his employment any workman, laborer, or boarding-house keeper who is guilty of a breach of this agreement, when required to do so by the engineer.

Seventh. All roads to quarries, quarry-leave, roads for 1682 hauling materials, and ways to and from the work, also all grounds for the deposit of materials (except for waste or spoiled bank and such other materials as may be reserved for the company), [and] the erection of shanties or yards for the performance of work, *and* to be procured and paid for by the party of the first part his own expense.

The aforesaid party of the second part hereby agree and bind themselves that upon the certificate of the chief engineer that the work contemplated to be done under this contract has been fully completed by the party of the first part they will pay said party of the first part for the performance of the same in full for materials and workmanship as follows, to wit:

For cleaning, per acre, [and] for grubbing, per acre, twenty-five dollars.

For earth excavation and embankment, sixteen cents per cubic yard.

For hauling earth and rock excavation, for each 100 feet beyond the first — feet, per cubic yard.

For rip-rap, per cubic yard.

For slope or retaining-walls, laid in cement, per cubic yard.

For battered walls, laid in cement, per cubic yard.

For masonry in box and open culverts, laid dry, per cubic yard.

For masonary in box & open culverts, laid in cement, per cubic yard.

1683 For masonary in arch culverts, laid in cement, per cubic yard.

For masonry in bridge abutments and peirs, laid in cement, per cubic yard.

For timber and plank foundations, culverts, &c., per thousand feet, board measure.

For timber and plank in trustle.

Piled and strained beam bridges, per thousand feet, board measure.

For wrought-iron in work, per pound.

For cast-iron in work, per pound.

For piles furnished and driven, per lineal foot.

For truss bridging, length of truss — to — feet, per lineal foot.

The "beam" to be no less than four, and greater if ordered by [the] engineer of the company.

It is further agreed by the party of the second part that estimates shall be made during the progress of the work on or about the first of each month, and that payments shall be made by the said second party upon the estimates and certificate of the engineer of the party of the second part on or before the 15th day of each month for the amount and value of work done and materials furnished during the previous month, 10 per cent. being deducted and retained by the company until the final completion of the work embraced in this contract, when all sums due the party of the first part shall 1684 be paid and this contract considered cancelled.

For the purpose of avoiding all cause of difference or dispute between the parties to this contract relative to its true intent and meaning, and for the purpose of adjusting in an amicable manner any difference that may or can arise relative thereto, it is mutually understood and agreed as follows, to wit:

First. The party of the second part hereby agrees to procure and furnish the lands for right of way, together with all necessary extra widths for borrowing pits or waste or spoiled banks, said second party reserveing the right at any time to change the localities of the line and the establishment of the grades; and it is hereby mutually agreed that no extra charge will be claimed or allowed on account of such changes in the line or grades, the prices herein mentioned being considered as full compensation for the various kinds of work agreed to be performed.

Second. Whenever work is required to be done which is not now contemplated or covered by the prices herein mentioned the engineer shall fix such prices for the work as he shall consider just and equitable; and said parties shall abide by such prices, provided the
party of the first part enter upon and commence such work
1685 with a full knowledge of the prices fixed by the engineer.
But [if] the party of the first part decline executing the work at the prices fixed by the engineer, then the party of the second part may enter into contract with any other person or persons for its execution, the same as if this contract had never existed. And if extra work, or work not provided for in this contract, is performed by the contractor without protest or notice in writing to the engineer, before such prices shall have been fixed for such work, then the engineer shall estimate the same at such prices as he shall deem just and reasonable, and his decision shall be final, and the contractor shall accept of such prices in full satisfaction of his demands against the party of the second part for said extra work. But nothing shall be deemed extra work that can be measured and estimated under the terms of this contract.

Third. If the party of the first part refuse or unreasonably neglect *the* remedy any imperfection which may be pointed out by the engineer, or in any manner violate the conditions of this contract, so that in the judgment of the engineer there shall be just grounds for apprehension that the work will not be completed in the man-
ner and within the time specified, then it shall be the duty of
1686 the engineer to serve a written notice upon said party, setting
forth the grounds for his apprehension and specifying the manner, together with a reasonable time in which said party may cause such grounds to be removed, and if at the expiration of such time said grounds of apprehension be not removed then full power and authority is hereby mutually vested in said engineer to declare this contract forfeited, and on such declaration being given in writing by the engineer to the parties hereto this contract shall determine immediately, and the said second party may forever retain the reserved per cent. on account of the consideration for damages which they may have sustained by reason of the forfeiture of this contract, or as an alternative to a declaration of forfeiture the party of the second part shall, on written report of the engineer that apprehensions are entertained that this contract will not be completed in the time and manner herein stipulated, have the right to take such measures as may be deemed by the engineer necessary to ensure the completion of the work in the time and manner herein stipulated, and to deduct from the monthly and final estimates of
work done under this contract such sum or sums as may be
1687 required to defray the expenses of such measures.

Among the measures which, under such circumstances, may be resorted to, and the execution by their own agents of such portions of the work as the said engineer may select, or the requirement that the party of the first part shall provide for and employ in the most efficient manner such additional men, carts, teams, &c., as the party of the second part may furnish, in which case said party of the first part agrees to employ said men, carts, teams, &c., in the manner directed by the engineer, who shall have the right to retain from the estimates an amount sufficient to pay said men, carts, teams, &c.

Fourth. It is further mutually agreed between the parties hereto that nothing herein shall be construed into a liability for damages on the part of the second party hereto should the whole or any part of the work embraced in this contract be for any reason suspended or delayed, and in no event will the party of the first part have a right to claim extra compensation or price for damages arising from such suspension or delay in the operations of said work, it being, however, understood and agreed that the party of the first part are
to have an exclusion of time for the completion of the work
1688 embraced in this contract, agree to any delays on the part
of the second party on account of right of way, or any other
reasons.

In witness whereof we have hereunto set our hands and seals this 9th day of November, 1881.

V. Q. IRWIN.
THE CHICAGO & GREAT SOUTHERN
R'Y CO.,
By D. H. CONKLIN, *Gen'l Supt.*

Witness:
R. A. HAMILTON.

Contractor's Notice of Lien.

Notice (Exhibit " B ") is hereby given to all whom it may concern that the undersigned, who, under contract with the Chicago & Great Southern Railway Company, constructed all the embankment and made all the excavations on said road from a point near the town of Oxford, Benton county, Indiana, to a point near Attica, in Fountain county, Indiana, and for which said railway company now owes him the sum of fifty-seven thousand and two hundred ($57,200) dollars, intends to hold a lien on all that part of said road-bed constructed by him, and the track laid thereon, to secure said debt, said part of said road being more particularly described as follows, to wit: Beginning at a point fifteen hundred feet south of where said
railway crosses the Lake Erie and Western railroad track in
1689 Oak Grove township, Benton county, Indiana, and running
thence southward where said railway crosses the Independ
ence grade or dirt road in the east half of the southe-st quarter of section thirty, in town. twenty-two north, of range seven east, in Warren township, in Warren county, Indiana.

Given under my hand this Oct. 17, 1883.

VOLNEY Q. IRWIN.

Mechanics' lien. Volney Q. Irwin to C. [&] G't Southern R. R.

Received for record Oct. 17, 1883, at 1 o'clock p. m., and recorded in the miscellaneous record No. 1, at page 365.

THOMAS J. GRAMS,
R. W. Co., Ind.

Recorder's fee paid.

Endorsement on back of complaint: "The clerk will issue summons to Fountain county, returnable on the 13th day of the Oct. term, 1883, being on the 5th day of November, 1883. Kennedy & Kennedy, McCalve & Son, att'y- for pl'ff."

And afterwards, to wit, on the seventh judicial day of the term of said court for January, A. D. 1884, held at the court-house aforesaid, and before the judge aforesaid, the following judicial order was entered of record, to wit:

1690 VOLNEY Q. IRWIN
vs.
THE CHICAGO & GREAT SOUTHERN R'Y COMPANY. } 2947.

Come the parties, by their attorneys, and the defendant, on motion, files her answer herein as follows, to wit:

STATE OF INDIANA,
Warren County. } *ss:*

Warren Circuit Court. January Term, 1884.

VOLNEY Q. IRWIN
vs.
THE CHICAGO & GREAT SOUTHERN RAILWAY COMPANY.

The defendant, for answer to the plaintiff's complaint, denies each and every material allegation mentioned in said complaint.

Second paragraph. And for a second and further answer to the plaintiff's complaint, the defendant says that before the commencement of this suit the defendant paid in full the claim mentioned in the complaint, to wit, on the — day of ——, 188–, the said defendant paid to the plaintiff in money —— dollars, and *the* on or about the 15th day of each month succeeding the time and date above mentioned said defendant paid to the said plaintiff various sums,
aggregating the amount of said plaintiff's claim, and being
1691 the amount in full of the amount claimed in his complaint
as due and owing upon the contract therein set forth, and that the defendant does not, at this time, owe the sum of money mentioned.

Wherefore the defendant asks judgment for costs.

GEO. W. McDONALD,
Att'y for Defendant.

And afterwards, to wit, on the eighteenth judicial day of the term of said court for March, 1884, held at the court-house aforesaid and before the honorable judge aforesaid, the following proceedings were had and entered of record in the order-book of said court, as follows, to wit:

VOLNEY Q. IRWIN
vs.
THE CHICAGO & GREAT SOUTHERN RAILWAY COMPANY. } 2947.

Comes the plaintiffs, by Kennedy & Kennedy and McCalve & Son, his attorneys, and also comes the defendant, by Crawford, McDonald and Dunning, her attorneys, and the court do now submit its special finding and conclusions of law stated therein, as follows, to wit:

VOLNEY Q. IRWIN
vs.
THE CHICAGO & GREAT SOUTHERN RAILROAD COMPANY.

1692 The defendant in the above-entitled cause having requested the court to make a special finding of the facts herein and state its conclusions of law thereon, the court makes its special finding of facts as follows, to wit:

1st. On the first day of November, 1881, the plaintiff and defendant entered into a written contract, precisely as alleged in the complaint, by the terms of which the plaintiff contracted to construct the earth-work for the defendant's railway from a point near the town of Oxford, Benton county, to the Independence grade, in Warren county, for which work the plaintiff — 25 dollars per acre for all cleaning and grubbing done by him and 16 cents per cubic yard for earth excavations and embankments.

2nd. That the plaintiff fully performed said contract upon his part and completed said work upon the 12th day of September, 1883; that the excavations and embankments of earth-work done by the plaintiff under said contract amounted to 309,833 cubic yards; that he cleaned and grubbed amounted to 40.6 acres of land, and under the direction of the defendant's chief engineer plaintiff excavated 1,384 cubic yards of rock and cement gravel, for which work no price was fixed in the contract, but for which he was allowed by said engineer 79 cents per cubic yard, making 1693 a total amount due the plaintiff for all of said work $51,681.64 dollars; that plaintiff has received thereon the sum of $40,231.34.

3d. The court further finds that after the making of said contract between the plaintiff and defendant, and after the defendant's lines of road had been located between the points named in plaintiff's contract and his work marked out by the defendant's engineer, the defendant contracted with other parties for the construction of the earth-work for a switch within the limits of the plaintiff's contract; that under said contract such other parties did construct the earth-work for such switch, and the work thereon amounted to 748 yards of earth-work, for which the defendants paid said contractor doing such work at the rate of 14 cents per cubic yard.

4. That — the execution of the contract between plaintiff and defendant one Hack contracted with the defendant for filling in of earth around a certain tressel-work on the defendant's line of road within the limits of the plaintiff's contract, under which said Hack did work amounting to 3,592 cubic yards of earth-work; that said work was done for the purpose of strengthening the said trussel-work, for which work said Hack received 14 cents per cubic yard.

1694 5th. The court further finds that there was other earth-work done on the line of the defendant's road within the limits of the plaintiff's contract to the amount of 7,538 cubic yards by other parties under special contracts with the defendant, for which the defendants paid such contractors at the rate of 14 cents per cubic yard, but that none of said work was done by the plaintiff nor his sub-contractors.

6th. The court further finds that on the 17th day of October, 1883, the plaintiff duly filed in the office of the recorder of Warren county, Indiana, due and legal notice of his intention to hold a lien upon said work and road so by him contracted for the payment of the amount due him for said work.

7th. The court further finds that a reasonable attorneys' fee for the foreclosure and enforcement of said lien is 600 dollars.

8th. The court further finds that the final estimate for the work so done by the plaintiff under and pursuant to said contract was made by the defendant's chief engineer after the commencement of plaintiff's action, to wit, on the 11th day of February, 1884.

9th. The court further finds that all of said work was done in Warren county, State of Indiana.

10th. The court further finds that by the terms of the contract
between the plaintiff and defendant the price to be paid for
1695 said work was due and payable to plaintiff upon the completion of the work.

Upon the foregoing facts the court states as its conclusions of law as follows, to wit:

1st. That the plaintiff is entitled to recover of the defendant the sum of 11,450.30, together with interest thereon from the 1st day of October, 1883, making in all $11,815.70, and the foreclosure of his lien upon the defendant's road-bed.

2d. That the plaintiff is not entitled to recover for his attorneys' fees.

3d. That the plaintiff is entitled to nothing upon account of earthwork done upon the defendant's line of road within the limits of plaintiff's contract by other contractors.

JOSEPH M. ROBB, *Judge.*

And the defendant, by her counsel, excepts to the conclusions of law and moves the court for a new trial.

It is therefore considered and adjudged and decreed that the plaintiff, Volney Q. Irwin, recover from the defendant, The Chicago & Great Southern Railway Company, the sum of eleven thousand eight hundred and fifteen dollars and seventy cents ($11,815.70), together with his costs herein laid out and expended, taxed
1696 at — dollars, and unless the said judgment is paid within ten
days from the entry hereof an order may issue to the sheriff of Warren county commanding him to sell all the line of defendant's railway from the point where it intersects the county line between the counties of Warren and Benton, in the State of Indiana, to a point in Warren township, in Warren county, Indiana, where the line of said railway crosses what is known as the Independence grade, said sale to be made as other sales upon execution, without relief from valuation or appraisement laws, and of his proceedings in the premises to make due return to this court.

And afterwards, to wit, on the 13th day of June, 1884, there was issued from the office of the clerk of said court an order of sale upon said judgment, which said execution reads as follows, to wit:

STATE OF INDIANA, *Warren County:*

Warren Circuit Court. March Term, 1884. Eighteenth Judicial Day.

VOLNEY Q. IRWIN
vs.
THE CHICAGO & GREAT SOUTHERN RAILWAY COMPANY.

SATURDAY, 12*th April*, 1884.

Before the Hon. Joseph M. Robb, judge of said court.

1697 Comes the plaintiff, by Kennedy & Kennedy and McCalve & Son, his attorneys, and also comes the defendant, by Crawford, McDonald and Dunning, her attorneys, and the court do now submit its special finding and conclusions of law stated therein as follows, to wit:

VOLNEY Q. IRWIN
vs.
THE CHICAGO AND GREAT SOUTHERN RAILROAD COMPANY.

The defendant in the above-entitled cause having requested the court to make a special finding of the facts herein and state its conclusions of law thereon, the court makes its special finding of facts as follows:

1st. On the 1st day of November, 1881, the plaintiff and defendant entered into a written contract, precisely as alleged in the plaintiff's complaint, by the terms of which the plaintiff contracted to construct the earth-work for the defendant's railway from a point near the town of Oxford, in Benton county, to the Independence grade, in Warren county, for which work the defendant contract- to pay plaintiff 25 dollars per acre for all cleaning and grubbing done by him and 16 cents per cubic yard for earth excavations and embankments.

2d. That the plaintiff fully performed said contract upon his part, and completed said work on the 12th day of September, 1698 1883; that the excavations and embankments of earthwork done by the plaintiff under said contract amounted to 309,833 cubic yards; that he cleared and grubbed amounting to 40.6 acres of land, and, under the direction of the defendant's engineer, plaintiff excavated 1,384 cubic yards of rock and cement gravel, for which work no price was fixed in the contract, but for which he was allowed by said engineer 79 cents per cubic yard, making a total amount due the plaintiff for all of said work 51,681.64 dollars; that plaintiff has received thereon the sum of 40,231.34.

3d. The court further finds that after the making of said contract between the plaintiff and defendant, and after defendant's line of road had been located between the points named in plaintiff's contract, and his work marked out by the defendant's engineer, the defendant contracted with other parties for the construction of the earth-work for a switch within the limits of the plaintiff's contract; that under said contract such other parties did construct the earth-work for such switch, and the work thereon amounted to 748 yards of earth-work, for which the defendant paid said contractor doing such work at the rate of 14 cents per cubic yard.

1699 4th. That after the execution of the contract between plaintiff and defendant one Hack contracted with the defendant for filling in of earth around *around* a certain tressel-work on the defendant's line of road within the limits of the plaintiff's contract, under which said Hacket did work amounting to 3,592 cubic yards of earth-work; that said work was done for the purpose of strengthening the said tressel-work, for which work said Hacket received 14 cents per cubic yard.

5th. The court further finds that there was other earth-work done on the line of the defendant's road within the limits of the plaintiff's contract to the amount of 7,538 cubic yards by other parties under special contracts with the defendant, for which the defendant paid such contractors at the rate of 14 cents per cubic yard, but that none of such work was done by the plaintiff nor his subcontractors.

6th. The court further finds that on the 17th day of October, 1883, the plaintiff duly filed in the office of the recorder of Warren county, Indiana, due and legal notice of his intention to hold a lien upon said work and road so by him constructed for the payment of the amount due him for said work.

1700 7th. The court further finds that a reasonable attorneys' fee for the foreclosure and enforcement of said lien is 600 dollars.

8th. The court further finds that the final estimate for the work so done by the plaintiff under and pursuant to said contract was made by the defendant's chief engineer after the commencement of the plaintiff's action, to-wit, on the 11th day of February, 1884.

9th. The court further finds that all of the said work was done in Warren county, State of Indiana.

10th. The court further finds that by the terms of the contract between the plaintiff and defendant the price to be paid for said work was due and payable to plaintiff upon the completion of the work.

Upon the foregoing facts the court states as its conclusions of law as follows, to-wit:

1st. That the plaintiff is entitled to recover of the defendant the sum of $11,450.30, together with interest thereon from the first day of October, 1883, making in all $11,815.70, and the foreclosure of his lien upon the defendant's road-bed.

2d. That the plaintiff is not entitled to recover for his attorneys' fees.

3. That the plaintiff is entitled to nothing upon account of earth-work done upon the defendant's line of road within the limits of plaintiff's contract by other contractors.

JOSEPH M. ROBB, *Judge.*

1701 It is therefore considered, adjudged, and decreed that the plaintiff, Volney Q. Irwin, recover from the defendant, The Chicago and Great Southern Railway Company the sum of eleven thousand eight hundred and fifteen dollars and seventy-cents (11,815.70), together with the costs herein laid out and expended, taxed at — dollars, and that unless the said judgment is paid within ten days from the entry hereof an order may issue to the sheriff of Warren county commanding him to sell all the line of defendant's railway from the point where it intersects the county line between the counties of Warren and Benton, in the State of Indiana, to a point in Warren township, in Warren county, Indiana, where the line of said railway crosses what is known as the Independence grade, said sale to be made as other sales upon execution without relief from valuation or appraisement laws, and his proceedings in the premises to make due return to this court.

The State of Indiana to the sheriff of Warren county, in said State, Greeting:

I, Henry C. Johnson, clerk of the Warren circuit court, do hereby certify the above and foregoing to be a full, true, and complete copy of the order, judgment, and decree made, rendered, and entered of record by said court in the above-entitled cause as the same appears of record remaining in my office. 1702

You are therefore hereby commanded to sell the property therein described in pursuance to the orders of said court as other property is sold on execution to fully pay and satisfy said judgment and interest thereon and costs of suit herein, without relief from valuation and appraisement laws, and make due return of this writ according to law, with your doings thereunder endorsed thereon.

Witness my hand and seal of said court this 13th day of June, 1884.

[SEAL.] HENRY C. JOHNSON, *Clerk.*
FRY BRYANT, *Dep.*

24 O. B., 180; F. B. 14, pg. 339; Ex. Doc. 9, page 260.

Warren Circuit Court.

VOLNEY Q. IRWIN
vs.
THE CHICAGO & GREAT SOUTHERN RAILWAY COMPANY.

Judgment rendered April 12, 1884.

Order of sale:

Principal	$11,815 70
Interest	120 13
Costs	20 70
Total	11,965 53

Replevicable without relief.
Returnable in 180 days from June 13, 1884.

K., K., McCALVE, *Attorneys.*

1703 And afterwards, to wit, on the 29th day of December, 1884, said execution and order of sale was returned by the sheriff to the office of the clerk of said court with the following return endorsed thereon, to wit:

Came to hand June 13, 1884, at 4 o'clock p. m., and I advertised the within-described real estate by first giving due and legal notice of the time and place of sale for at least twenty days before the day of sale by posting printed notices thereof in three of the most public places in Warren and Adams townships, and a like notice at the court-house door of Warren county, Indiana, and also by advertising three weeks successively immediately previous to date of sale in the Warren Republican, a weekly newspaper of general circulation printed and published in said county; said sale was set for July 12, 1884, and I did on the 12th day of July, 1884, at the court-house door of Warren county, Indiana, between the hours prescribed by law, at public auction, first expose for sale the rents and profits for the term not exceeding seven years, offering in parcels as follows, to wit: All of the line of defendant's railway from the point where it intersects the county line between the counties of Warren and Benton, in the State of Indiana, to a point in Warren 1704 township, in Warren county, Indiana, where the line of said railway crosses what is known as the Independence grade, all in Warren county, Indiana; and, receiving no bid therefor, I then offered at public auction aforesaid the fee-simple of said real estate in parcels as above described, and Volney Q. Irwin did then and there bid the sum of five hundred dollars, and no person bidding more, the same was in due form openly struck off to said Volney Q. Irwin, he being the highest and best bidder, and that being the highest and best price bid for the same; and the said Volney Q. Irwin having paid the amount so bid by him, I executed and delivered to him a certificate of purchase of said premises, and I have paid all costs, and this writ is returned not satisfied, together with the receipt of plaintiff for $449.10 as principal and interest, and retain my fees in full.

Nov. 22, 1884.

J. L. STUMP, *Sheriff.*

Received of J. L. Stump, sheriff, the sum of four hundred and forty-nine $\frac{10}{100}$ dollars on principal and interest — this writ, July 12, 1884.

V. Q. IRWIN.

Received of Jos. L. Stump, sheriff, twenty dollars and seventy cents, and one dollar for certificate, and also eleven dollars 1705 printer's fees.

July 18, 1884.

H. C. JOHNSON, *Clerk.*
FRY BRYANT, *Dep.*

And afterwards, to wit, on the 11th judicial day of the term of said court for June, A. D. 1884, held at the court-house aforesaid and before the hon. judge aforesaid, the following proceedings were had in the above-entitled cause, to wit:

VOLNEY Q. IRWIN
vs.
THE CHICAGO & GREAT SOUTHERN RAILWAY COMPANY. } 2947.

Come the parties, by their attorneys, and the court do now overrule defendant's motion for a new trial, and defendant excepts and the court grant defendant sixty days' time to file bills of exceptions herein.

STATE OF INDIANA,
Warren County, } *ss:*

I, Henry C. Johnson, clerk of the Warren circuit court, do hereby certify that the above and foregoing is a true, full, and complete copy of the complaint, exhibits with complaint, answer, judgment, execution issued thereon, and of the sheriff's return endorsed upon said execution, and of the order overruling defendant's motion for a new trial, all of which appears of record, remaining of record on the order-book of said court. 1706

In witness whereof I hereunto set my hand and seal of said court, at my office in the town of Williamsport, on this 16th day of May, 1885.

[SEAL.] HENRY C. JOHNSON, *Clerk.*
FRY BRYANT, *Dep.*

IRWIN EXHIBIT "C."

STATE OF INDIANA,
Warren County, } *ss:*

I, Henry C. Johnson, clerk of the circuit court in and for the county and State aforesaid, do hereby certify as follows: That by virtue of the proper process issued from said court upon an order, finding, or judgment recovered therein in cause No. 2947, wherein Volney Q. Irwin [is] plaintiff and The Chicago & Great Southern Railway Company [is] defendant, the sheriff of Warren county, Indiana, as evidenced by the return by him made to such process, sold certain real estate, a particular description of which appears in the records of said cause or in the return of said sheriff, and 1707 the same appears upon page 260 of execution docket 9 of said court, all of the line of defendant's railway from the point where it intersects the county line between the counties of Warren and Benton, in the State of Indiana, to a point in Warren township, in Warren county, Indiana, where the line of said railway crosses what is known as the Independence grade, all in Warren county, Indiana; that John C. New, trustee, claiming to be trustee in a certain mortgage deed by said defendant to him duly recorded, has this day paid me, as clerk aforesaid, the sum of five hundred and thirty-nine & $\frac{78}{100}$ dollars in redemption of said real estate, that being the amount, as shown by the records of my office, necessary at this date to redeem the same; the redemption hereby certified to remain in force and effect until, under existing laws, a subsequent sale or redemption of said real estate shall be made.

Witness my hand and the seal of said court this 10th day of July, 1885.

[SEAL.] HENRY C. JOHNSON, *Cl'k.*
FRY BRYANT, *Deputy.*

1708 In the Matter of the Intervening Petition of CLEVELAND ROLLING MILL COMPANY.

Testimony taken before M. P. Fishback, master in chancery of said court, at Chicago, Wednesday, June 16th, 1886.

Present: Col. John S. Cooper, on behalf of petitioner; O. Peckham and Henry Crawford, Esqrs., for the bondholders.

JABEZ B. STUBBS, a witness called on behalf of the petitioners, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. State your name, residence, and business.

A. My name is Jabez B. Stubbs; I reside in Chicago; I am in the coal business at present.

Q. What was your business in the year 1881?

A. Iron broker.

Q. I will call your attention to a document found among the exhibits introduced in evidence in this case on the special reference to John Gray, as examiner, the document being marked "Exhibit K," and ask you whether you recognize it or not.

A. I recognize it; yes; it is the contract for the sale of a thousand tons of rails by the Cleveland Rolling Mill Company to the
1709 Chicago and Great Southern Railway Company.

Q. Who negotiated that contract?

A. The firm of Stubbs & Runyan.

Q. Did you personally have anything to do with it for that firm?

A. Yes, sir.

Q. Were you a member of the firm?

A. I was.

Q. You were acting at that time simply as brokers?

A. Yes, sir.

Q. And were, as I understand you, a member of the firm of Stubbs & Runyan?

A. Yes, sir.

Solicitor for petitioner offered the paper marked "Exhibit K" in evidence.

Q. Whom did you negotiate this contract with, acting on behalf of the railroad company?

A. With Mr. Henry Crawford.

Q. That is his signature, is it, on that contract?

A. Yes, sir.

Q. Did you have anything to do with the matter of completing that contract or carrying it out, on the part of the Cleveland Rolling Mill Company?

A. Yes; our house negotiated the sale.

Q. After the sale was negotiated what did you do while the contract was being performed?

A. We undertook to do the collecting.

1710 Q. State what you did.

A. As the rails were shipped a bill with the bill of lading and a sight draft on Henry Crawford was sent to us to collect.

Q. What did you do about collecting?

A. I presented the drafts as they came from time to time to Mr. Crawford.

Q. What did he say?

A. His excuse was that he had not the money at that time, but in a few days it would be all right, and he would pay them.

Q. What did you do with the bills of lading?

A. I took the bills of lading from the draft and gave the bills of lading to Mr. Henry Crawford, or some one in his office.

Q. Do you remember what the aggregate of those bills of lading was as to the iron shipped—the number of gross tons?

A. The contract was for a thousand tons. There was a few tons over a thousand tons shipped.

Q. Do you remember the amount?

A. A thousand and three tons and some pounds.

Q. After you had delivered the several bills of lading detached from the drafts to Mr. Crawford, did you subsequently have any interview with him with reference to the iron being sent forward and delivered?

A. Yes; I had a great many interviews with Mr. Crawford.

1711 He acknowledged the rails were received, and that the bills were all right, but he was disappointed in getting money as he expected, and it was put off from time to time.

Q. What, if anything, was furnished by the Cleveland Rolling Mill Company in addition to the iron rails called for by the contract?

A. There was another contract made on the 31st day of October

Q. What year?

A. 1881, for splice bars or angle bars enough to furnish the thousand tons of rails.

Q. Who furnished those splice bars?

A. The Cleveland Rolling Mill Company.

Q. To the Chicago and Great Southern Railroad Company?

A. Yes, sir.

Q. You made that arrangement or contract with Mr. Crawford?

A. That contract was made before the rails were made, but subsequently to the contract for rails the splice bars or angle bars were shipped with the rails.

Q. After all the materials, the iron rails, and the splice bars had been sent forward by the Cleveland Rolling Mill Company, did you have any interviews with Mr. Crawford?

A. Yes, sir; a great many.

Q. What, if anything, did you say after all had been 1712 shipped about the correctness of the amount as claimed by the Cleveland Rolling Mill Company, or you for it, as shown by these drafts?

A. Mr. Crawford never disputed the claim to me; he always acknowledged that the claim—the price and the claim—was all right; the rails had been shipped as agreed; it was only a question of his not being able to furnish the money.

Q. Do you remember the total amount of the bill? Look at the statement I now show you and state whether that is correct or not.

A. That is correct as the total amount of the invoice, $52,278.33, and the amount of the credit.

Q. Does that include splice-bars and rails?

A. Yes, sir.

Q. How much is the credit?

A. $22,634.36.

Q. When was that latter amount paid?

A. That came into my possession on March 24th, 1883, I think.

Q. Do you know about the time that the last bill of iron and splices was delivered?

A. That was during the first part of December, 1881.

Q. What is the balance due?

A. I have not computed it.

Q. On what date was that credit paid?

A. It was paid to me March 24, 1883.

Q. That a balance at that time?

1713 A. $29,643.97.

Q. That is without computing interest?

A. Yes, sir.

Q. When you received the check or the draft for the amount that was paid of the 24th March, 1883, what, if anything, was said by you and Mr. Crawford about the interest on the whole bill?

A. When I went to Mr. Crawford it was — the expectation, from previous talk, that I was expecting to get the full amount of the bill and interest; but when I called upon him he said, "I can't pay the whole of this; I will pay you on account, and we will adjust the interest when I pay the balance."

Q. What did he say about when the balance would be paid?

A. Well, only in a short time he would settle it up. That was always it—next week or in a few days.

Cross-examination by Mr. Crawford:

Q. Mr. Stubbs, you have been previously examined in connection with this matter, haven't you?

A. Yes, sir.

Q. In this same case, haven't you?

A. Yes, sir.

Q. Judgment has been taken, hasn't it, for that claim in the United States circuit court for the northern district of Illinois?

1714 A. I don't know anything about judgment.

Q. Don't you know as a matter of fact that Mr. McMillan *book* judgment for the amount of the claim?

A. I don't know.

Q. Mr. Stubbs, have you got your letter-books here?

A. I have a letter-book here; yes, sir.

Q. Have you got the letter-book containing the letter-*book* of March 24, 1883, where you sent the remittance to the Cleveland Rolling Mill Company?

A. I have not.

Q. I wish you would be good enough to produce that. You have it, have you not?

A. Yes; I think I have.

Q. You remember you were examined about this matter before, do you not?

A. Yes, sir.

Q. You remember the kind of payment that that was made in, don't you?

A. Yes, sir.

Q. A check on Drexel, Morgan & Co.?

A. Yes, sir.

Q. You testified about your having sent a letter?

A. Having sent a letter where?

Q. To Cleveland, to the Rolling Mill Company.

A. I *re*mitted that.

A. And also a statement with regard to the transaction generally. Don't you remember that?

1715 A. I presume so; yes, sir.

Q. Referring to that letter, would you be kind enough to examine your letter-books and produce a copy of the letter-press copy of the letter which you sent at that time?

Solicitor for petitioner objected to the introduction of the letter on the grounds previously stated.

Charles Gatzing, a witness called on behalf of the petitioner, being first duly sworn, was examined in chief by Col Cooper, and testified as follows:

Q. State your name, occupation, and residence.

A. My name is Charles Getzing; I am driving a car now.

Q. Where do you live?

A. 71 Addison street, Cleveland, Ohio.

Q. What business were you in in the fall of 1881?

A. In the Cleveland Rolling Mill; foreman of the yard.

Q. What were your duties?

A. To weigh the cars and to ship off the rails.

Q. Do you remember about shipping rails for the Cleveland Rolling Mill Company to the Chicago and Great Southern Railway Company?

A. Yes, sir.

Q. Have you got a statement of the amount of rails that were shipped?

1716 A. Yes, sir.

Q. When, and how directed, it shows?

A. Yes, sir.

Q. You may state what rails you shipped for the Cleveland Rolling Mill Company to the Chicago and Great Southern Railway Company.

A. They were 52-pound iron rails.

Q. How much in amount—how many gross tons?

A. 1003 and $\frac{2}{10}$.

Q. 1003 $\frac{2}{10}$ gross tons?

A. Yes, sir.

Q. 52 pounds to the yard?

A. Yes, sir.

Q. Where were they directed?

A. As I understood they were directed to Goodland, Indiana.

Q. Did you do the weighing?

A. Yes, sir.

Q. Have you got your book here showing the details of the shipments?

A. Yes, sir.

Q. Have you got a statement made up from the books?

A. I have.

Q. Produce it.

A. (Witness produces paper).

Q. Is that statement correct?

A. That is correct; yes, sir.

Counsel for petitioner offered the paper in evidence, which is hereto attached, marked "Exhibit A."

1717 Cross-examination by Mr. CRAWFORD:

Q. Mr. Gatzing, is that your handwriting, any of it?

A. Yes, sir.

Q. Is that your handwriting at the bottom?

A. Yes, sir.

Q. Is that all. You did not write that, did you (indicating)?

A. I did.

Q. Did you copy these *of* the book?

A. I did.

Q. Do these agree with the book?

A. They agree with the book; yes, sir.

(The witness subsequently said he meant the signature was his handwriting, but the paper was correct).

D. A. CAMERON, a witness called on behalf of the petitioner, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. What is your name, occupation, and residence?

A. My name is D. A. Cameron. I live in Cleveland, Ohio. I have charge of the shipping department of the Cleveland Rolling Mill Company.

Q. What was your occupation in the fall of 1881?

A. The same.

1718 Q. Do you know anything about the shipment to the Chicago and Great Southern Railway Company of supplies in the fall of 1881?

A. Yes, sir; I shipped three car-loads of plain splices for 52-pound rails for a thousand tons; that was the first order; of course, they exceeded a thousand tons, a few rails over.

Q. How much in the aggregate were shipped—how many tons?

A. We shipped three car-loads, amounting, in all, to 9,226 pieces; total number of pounds, 66,620—three car-loads; Nov. 15th, 3,000; November 22nd, 3,026; November 29th, 3,200; in all, 9,226 pieces; that is the contents of the separate car-loads.

Q. Do you know what price?

A. No, sir.

Q. Do you know the going price for splices of that character that fall?

A. Only from recollection; not certainly; somewhere in the neighborhood of $45, I think.

Q. Per ton?

A. Yes, sir; probably $50, it might be at that time.

Q. Have you got a statement of this?

A. That (handing paper to counsel) is a copy from the shipment-book.

Q. Did you make it?

A. Yes, sir.

Q. Is it correct from the shipping-book?

1719 A. It is in my writing; I loaded the splices and saw them shipped.

Q. This is your handwriting, is it?

A. Yes.

Q. All of it?

A. He called the car numbers and weights from this book this morning.

Q. I am speaking about your statement?

A. That is in my handwriting.

Q. It was taken off by you?

A. Yes, sir.

Q. Is the statement correct?

A. Yes, sir; it is.

Q. In accordance with the book?

A. A copy of the book.

Q. You kept the book at that time?

A. At that time.

Q. You saw the stuff shipped?

A. Yes, sir.

Q. You made the weights?

A. I made the weights.

Q. How was it billed—to whom was it billed?

A. It was billed to the Chicago and Great Southern railroad, Goodland, Indiana.

Counsel for petitioner have offered the paper in evidence, which is hereto attached, marked "Exhibit Cameron A."

Cross-examination waived.

1720 WILLIAM CHISHOLM, a witness called on behalf of the petitioner, being first duly sworn, was examined in chief by Col. COOPER, and testified as follows:

Q. State your name, occupation, and residence.

A. My name is William Chisholm; I am president of the Cleveland Rolling Mill Company; I live in Cleveland, Ohio.

Q. What was your occupation in the fall of 1881?

A. President of the Cleveland Rolling Mill Company.

Q. Do you know anything about the price at which 66,620 pounds of fish-plates were sold and shipped to the Chicago and Great Southern Company in the fall of 1881?

A. Yes, sir.

Q. What was the price?

A. Two and three-quarters.

Q. What was a fair price for those at that time?

A. That was the regular price.

Q. Two and three-quarters cents a pound?

A. Yes, sir.

Q. Did or not fish-plates of that character have a regular price in the market at that time?

A. Yes, sir.

Q. What was the fair and going rate at that time for 52-pound iron rails per gross ton?

A. Fifty dollars and a quarter.

Q. A ton?

A. Yes, sir.

1721 Q. Did you ever see Mr. Crawford with reference to the bill of the Cleveland Rolling Mill Company against the Chicago and Great Southern Railway Company or any other officer of of the railway company?

A. I did. Whom did you see—Mr. Crawford alone?

A. Mr. Crawford.

Q. Whereabouts?

A. I met him in New York, in Drexel, Morgan & Co.'s office.

Q. About what time?

A. Well, I should think it was in the winter of 1882.

Q. The winter of 1882-'3—I mean—say December, 1882, and January, 1883.

A. In 1882 and 1883.

Q. It was in the banking house of Drexel, Morgan & Co., in New York city?

A. Yes, sir.

Q. State what conversation occurred between you and Mr. Crawford there with reference to this matter or what the conversation was.

A. He stated that he expected to get money from Drexel, Morgan & Co., and as soon as he got it he would pay us money the first?

Q. Did he say anything about the bill—about it being correct or not?

A. No, sir.

Q. Nothing said about that.

A. No, sir.

1722 Q. What did he tell you, if anything, with reference to what his negotiations were with Drexel, Morgan & Co.?

A. He didn't tell me.

Q. He has sworn in this case, in substance, on the former reference that he told you as follows: "Right in that connection I desire to state that while I was making this negotiation with Drexel, Morgan & Co., which probably occupied in all over a month, I saw Mr. William Chisholm, president of the Cleveland Rolling Mill Company, in Drexel, Morgan & Co.'s office in New York, and told him just exactly what my business there was and the full and precise nature of it. Later he got, at my earnest solicitation, 22, twenty-two thousand odd hundred dollars out of this very Drexel, Morgan & Co. loan on a check drawn on that house." I will ask you whether that is the interview, that he refers to, that you are now speaking about?

A. I think it is.

Q. Did you ever have any other interview there?

A. No, sir.

Q. What did he tell you about the full and precise nature of his business with Drexel, Morgan & Co.?

A. To get money to pay our bill.

Q. What did he say about negotiating a loan on the bonds of this railroad?

A. He didn't refer to it at all.

1723 Q. You are confident of that?

A. Yes, sir.

Cross-examination by Mr. Crawford:

Q. Mr. Chisholm, did you ever take any steps to secure a lien on this railroad for the rails furnished in construction under the law of Indiana?

Objected to by counsel for petitioner.

Q. I mean did you file any notice or claim of lien for these rails furnished?

A. I don't believe we did.

Q. They were furnished in the fall of 1881, were they not?

A. Yes, sir.

Q. And then the first litigation that you had was reducing the claim to a simple judgment at law here in Chicago, wasn't it, under the direction of Mr. McMillan?

A. That was the first.

Q. You never filed any notice, under the law of Indiana, to secure a lien for these rails, or brought any suit to enforce any such lien, according to your recollection, did you?

A. Not before Mr. McMillan had judgment entered up here.

Q. That shows for itself what it was; that is the only litigation you know anything about prior to filing a petition
1724 in this case?

A. Yes, sir.

Redirect examination by Col. Cooper:

Q. You may look at the intervening petition, What was the amount of your claim due to you at the time of the filing of your petition in this cause and unpaid, calculating interest at six per cent.

A. $40,002.73.

Q. You said in answer to a question on cross-examination that you did not commence any proceedings for a lien. I will ask you why you did not, Mr. Chisholm.

A. Well, we delayed doing anything, taking Mr. Crawford's word that he would see us paid.

Q. It was on account of assurances from Mr. Henry Crawford.

A. Entirely.

Q. From time to time that you would be paid.

A. Yes, sir.

Mr. Crawford: You spoke about $40,002.73. What does that include? Is it a statement of the amount due on the judgment? It is a judgment on the judgment, isn' it?

Col. Cooper: That is what it is.

Mr. Crawford: And costs, and all that?

Col. Cooper: Yes.

Mr. Crawford: It is not the claim with interest, as Col.
1725 Cooper inquired of you, but it is the amount due on the judgment in Indiana that was taken on the judgment and costs in Illinois, isn't it?

Col. Cooper: That is it.

Mr. Crawford: So it is interest on interest and interest on costs, and so forth.

A. Yes, sir.

Col. Cooper: You may look at that statement and say what the the amount due was, computing simple interest from the time the account began to run, after the goods were delivered, up to the time judgment was taken in Chicago.

A. $35,160.22.

Q. The total amount of the claim was $52,278.33, was it not?

A. Yes, sir.

Q. And then on the 24th day of March there was paid a sum of how much?

A. $22,634.36.

Q. Then computing interest on that up to the time the judgment was rendered in the circuit court of the United States for the northern district of Illinois, the amount due at the date of the judgment was——

A. $35,160.22.

Counsel for petitioner offered in evidence the computation marked "Exhibit A, Chisholm."

Col. COOPER: A certified copy of the judgment obtained in the United States circuit court for the northern district of Illinois, together with the judgment rendered in the Newton 1726 circuit court in Indiana, later, upon that judgment, will be submitted to the master as part of the proof in this case.

Mr. CRAWFORD: Mr. Chisholm, there have been many thousand tons of rail previously sold, delivered, and paid for, haven't there?

A. Well, I wouldn't be certain, but I presume so.

JABEZ B. STUBBS, being recalled, was examined in chief by Col. COOPER, and testified as follows:

Q. Have you brought your letter-book?

A. Yes, sir.

Q. Read the letter that was called for.

A. (Witness reads letter as follows:)

"MARCH 24TH (the year is not down here, but it is 1883).

William Chisholm, Esq., president Cleveland Rolling-Mill Company.

MY DEAR SIR: Enclosed I herewith hand you Henry Crawford's check on Drexel, Morgan & Co., New York, for $22,634.36, cash on account, being the amount of your bills against the Great Southern Railroad Company, November 14th to 28th, inclusive, 1881, nine bills, leaving out interest to be paid in final settlement. I 1727 must say I am disappointed, for I expected a full settlement.

Mr. Roswell Miller, the party who countersigns the check, does so for Drexel, Morgan & Co., so there is no question about the check being paid. I have had two interviews with Mr. Miller, and he says there is no question in his mind but what the whole claim will be paid; that Mr. Crawford gets the money from D., M. & Co. in three installments. I think Crawford will pay some more in about two weeks.

Yours truly, J. B. STUBBS.

Please acknowledge receipt.

S."

Here is a post-script: "W. C.;" that is Mr. Chisholm's initials. "I think Crawford will kick when it comes to paying seven per cent. interest. If he does, what do you authorize me to accept? Stubbs.

Col. COOPER: Did you ever explain to Mr. Chisholm, or to any other officer or agent of the Cleveland Rolling-Mill Company, anything that you knew about the manner in which Mr. Crawford was getting his money on the bonds of this railroad company?

A. I think—it is my impression that I notified Mr. Chisholm that Mr. Crawford was getting his money from Drexel, Morgan & Co.

1728 Q. Of course; that you notify him there. Now I ask you whether you told him *in* manner in which he was getting it—how he was getting it, and so forth?

A. I don't know as I did; I don't know as I knew.

Cross-examination by Mr. CRAWFORD:

Q. Let me refresh your recollection. I think you testified before; don't you remember that from time to time you called upon me and asked for security for some of the bonds of the company to secure the Cleveland Rolling Mill Company for unpaid rails, don't you?

A. I remember of asking you at one time if you would not give notes secured by bonds.

Q. Didn't I tell you at that time that the bonds were hypothecated?

A. Well, I think you said they were in a shape that you could not —.

Q. Didn't I tell you that they were pledged for debts?

A. Well, I don't know but you did.

Q. Wasn't it not only once but a great many times we had those interviews, and didn't I tell you I was trying to make a negotiation with Drexel, Morgan & Co. before it was made?

A. I presume you did.

1729 Q. Didn't I tell you that that negotiation was a negotiation for them to advance money on the bonds?

A. I could not say whether that is it or not.

Q. What is your impression?

A. Well, my impression is that you were putting up securities of some kind, of course, to raise the money.

Q. Wasn't it the bonds of the company I had told you about, because you had asked me for them, hadn't you?

A. I did at one time, I know.

Q. Only once do you think?

A. Well, I don't know.

Q. Wasn't it repeatedly, now?

A. No; I didn't ask you repeatedly for notes and securities, but I got tired——

Q. Do you know you asked once?

A. Yes; I do.

Q. And that was the response?

A. Yes, sir.

Q. Don't you remember before the Drexel, Morgan & Co. loan was negotiated that you were advised of that—that I was negotiating a loan of Drexel, Morgan & Co., on the pledge of the railroad company's bonds, to build the road and pay off its debts?

A. Well, I don't know anything about what your security was; I know you told me you were negotiating, and I have every reason to believe that you were; your promises were made on that several times.

1730 "EXHIBIT GATZING A."

Date.	L. S. & M. S cars.	Net weight.	Date.	Car No.	Net weight.
1881.			1881.		
Nov. 14	11,828	31,380	Nov. 28	11,568	29,990
" "	10,227	31,750	" 29	10,994	29,590
" "	14,091	31,660	" "	11,999	40,180
" "	12,369	31,260	" "	11,448	40,280
" "	12,431	31,260	" "	11,969	39,760
" "	12,828	31,260	" "	12,486	39,990
" 15	10,363	31,600	" "	12,036	29,810
" 16	10,161	29,420	" "	12,150	31,540
" "	12,476	31,640	" 30	11,021	30,090
" "	11,960	31,570	" "	11,328	24,790
" 17 & 18	10,822	29,020	" "	12,066	30,080
" "	10,629	31,240	" "	12,338	31,280
" "	10,409	31,040	" "	10,723	29,840
" "	10,778	31,310	Dec. 1st	12,344	31,400
" 25	12,395	32,110	" "	12,282	31,560
" "	12,021	31,740	" "	10,499	31,070
" "	11,767	30,470	" "	12,389	31,170
" "	11,096	30,570	" "	12,286	31,690
" 26	10,479	30,000	" "	12,042	31,420
" "	11,462	30,200	" "	12,201	31,400
" "	10,242	31,620	" "	12,143	30,890
" "	11,728	40,500	" 2nd	10,869	29,870
" "	12,034	31,650	" "	12,115	32,050
" "	10,961	40,410	" "	12,017	31,310
" 28	12,482	40,700	" "	11,897	40,180
" "	11,787	29,780	" "	12,478	31,170
" "	11,556	29,630	" "	11,972	39,950
" "	11,827	26,740	" 3rd	11,192	31,000
" "	12,186	31,590	" "	12,077	31,220
" "	12,367	31,510	" "	11,743	24,840
" "	11,837	40,550			
" "	11,821	29,610			
		1,019,890			1,000,080

1731 52-lb. iron rails shipped from C. R. M. Co., Cleveland, O., to Chicago & G't Southern R. R., Goodland, Ind., by Chas. Getzien, at dates given in this list:

1881.	Car number.	Net weight.
Dec'r 3rd	11,987	40,370
" "	11,959	32,320
" "	10,632	29,180
" "	11,865	40,140
" 5	11,752	27,180
" "	13,765	27,130
" "	12,325	27,480
		223,800

Total number cars shipped	70
Total weight	2,248,750
Gro. tons	1,003.9

I hereby certify that all these cars rails, as specified, were shipped & weighed by me as shipping clerk for the Cleveland Rolling Mill Co. to the Chicago & G't South. R. R. Co., Goodland, Ind.

CHARLY GEITZIEN.

1732 "CAMERON EXHIBIT A."

Shipped by Cleveland Rolling Mill Co., Cleveland, O., to Chicago & G't Southern R. R. Co., Goodland, Ind., the following cars fishplate- for 52-lb. iron rails:

1881.	Car No.	Quality.		Net weight.
Nov. 15th.	12,654	3,000	plain splices.	22,100
" 22.	6,904	3,026	" "	22,150
" 29.	15,160	3,200	" "	22,370
		9,226	Total lbs....	66,620

I hereby certify to having shipped above 3 cars splices, as described above.

D. A. CAMERON,
Shipping Clerk for C. R. M. Co.

"EXHIBIT CHISHOLM A."

Statement.

CLEVELAND, *Dec. 26th*, 1883.

From Cleveland R. M. Co., No-. 99 & 101 Water St., to Chicago & G't Southern R. R.:

Summary.

Dr. as per statement attached		29,643 97
In'st from average date of delivery to Dec. 26, '83, @ 52,278.33, 6%	$6,534 79	
Less in'st on payment M'ch 26, '83, 22,634.36, to Dec. 26, '83, @ 6%	1,018 54	
Proportion of in'st due C. R. M. Co.		5,516 25
		35,160 22

WM. G. McMILLAN, *Att'y.*

1733 In the Matter of the Intervening Petitioner of CRERAR, ADAMS & CO.

Testimony taken before W. P. Fishback, master in chancery of said court, at Chicago, Thursday, June 17th, 1886.

Present: Lyman & Jackson, on behalf of the petitioners; O. Peckham, Henry Crawford, and R. B. F. Peirce, Esqrs., for the bondholders.

Edward S. Shepard, called on behalf of the petitioner, being first duly sworn, was examined in chief by Mr. Jackson, and testified as follows:

Q. What is your name?
A. Edward S. Shepard.
Q. What is your business?
A. Railroad supplies.
Q. With what firm are you connected?
A. Crerar, Adams & Co.
Q. How long have you been a member of that firm?
A. About 12 years.
Q. Look at the document I now show you, endorsed on the back, "Filed October 2, 1885, Noble C. Butler, clerk," and state
1734 whether that is your name attached to the affidavit.
A. Yes, sir.

Q. Look at the statement attached to the affidavit and state to the court what that is.

A. It is a statement to the Chicago & Great Southern Railway Company for supplies furnished.

Q. Made by whom?
A. Made by our cashier and myself.
Q. Made by what firm?
A. Crerar, Adams & Co.
Q. To that railroad company?
A. Yes, sir.

Q. Do you know those supplies were furnished by Crerar, Adams & Co. to the railway company?

A. Yes, sir.
Q. At what time?
A. At the date specified here.
Q. What is the amount of the claim?
A. $7,809.94.
Q. Has it ever been paid?
A. No, sir.
Q. Is that without interest or with?
A. Without interest.
Q. Has it ever been presented for payment?
A. Yes, sir.
Q. Upon what terms were the goods sold?
A. Well, I don't know that there was any terms specified; our usual terms are thirty days, always; of course, we don't always get
1735 paid in thirty days; sometimes we have to give ninety, but thirty days is our regular term.

Cross-examination by Mr. **Crawford**:

Q. How much of this bill, Mr. Shepard, was furnished after February 27, 1884?

A. $1,411.58.

1736 *Smith Bridge Company.*

In the Matter of the Intervening Petition of the SMITH BRIDGE COMPANY.

ROBERT W. SMITH, being sworn, testifies as follows:

Direct examination:

Questions by Mr. COOPER:

1 Q. State your name, occupation, and residence.

A. Robert W. Smith; residence, Toledo, Ohio; president of the Smith Bridge Company.

2 Q. Did your company ever make any contract with the defendant Crawford, acting for the Chicago & Great Southern Railway Company?

A. It did.

3 Q. Look at that document and state what it is. (Showing paper.)

A. This is a contract made Oct. 26, 1882, made for a bridge over the Wabash river at Attica, on the line of the Chicago & Great Southern railroad.

Said contract is introduced in evidence by the petitioner, [and] the contract identified by the witness — and of the date named in his answer.

The petitioner is permitted to withdraw the original contract and furnish a copy of the same, which copy is marked Exhibit Smith Bridge Company No. 1. (See page 188.)

1737 4 Q. Did the Smith Bridge Company ever make any contract for the building of the bridge for the Chicago & Great Southern railroad?

A. That was later—about a year afterward, I think.

5 Q. Look at the paper now shown you and say what it is.

A. It is a contract for a bridge over Pine creek, July 24, 1883.

6 Q. Is this that contract?

A. Yes, sir.

Said contract is introduced in evidence by the petitioner, the original being by permission withdrawn, and a copy put *it* in its place, which copy is marked Exhibit Smith Bridge Company No. 2. (See page 192.)

7 Q. What did the Smith Bridge Company do in the matter of the building of the bridge over the Wabash river?

A. The building was completed according to the stipulation of the contract in 1883.

8 Q. What do you know from personal examination of the work as it progressed about the work being done?

A. The bridge was completed fully according to contract. I visited it several times during the construction of it and had consultations with Mr. Peters, the engineer.

9 Q. Was Mr. Peters, the engineer, in charge for the company?

A. Yes, sir.

1738 10 Q. Did you get estimates monthly under the contract for the work as it progressed?

A. There were estimates returned by the engineer monthly, not immediately after the materials were furnished, but a little later, in the ordinary way.

11 Q. Were the estimates furnished by the engineer; did he pass upon the work?

A. Yes, sir.

12 Q. Until its final completion?

A. Yes, sir.

13 Q. And gave a final estimate?

A. Yes, sir.

14 Q. Were any of the estimates paid?

A. They were; I think the two first estimates were paid.

15 Q. Do you remember how much they amounted to—that is, the two estimates that were paid.

A. The first was $12,825; that was the first that we received. I do not know whether that was covering a single estimate or whether it was two; it was the first payment. The date is June 16, 1883. The second one was paid Aug. 21, 1883—$4,725.

16 Q. Were there any subsequent estimates paid after that?

A. No, sir; there was a payment made.

17 Q. That is a matter that I shall ask you about when we come to the small bridge.

1739 A. There was nothing more paid on the large bridge.

18 Q. I will ask you what the Smith Bridge Company did with reference to the completion of the contract for building the Pine Creek bridge under the second contract introduced in evidence.

A. We built the bridge according to contract, and it was accepted by the engineer.

19 Q. Did you see the work as it progressed from time to time on that bridge also, or any of it?

A. Yes, sir; I saw the most of it, but do not recollect that I saw it after it was entirely completed. The material was all there, and it was partly constructed.

20 Q. Did your estimate that you got include the two?

A. Yes, sir; the engineer returned the estimate in that way and reported to us.

21 Q. Will you look at these documents now shown you and state what they are.

A. Those are the estimates as returned to the company.

22 Q. The Smith Bridge Company?

A. No, sir.

23 Q. The railroad company?

A. These, I presume, were returned in to the railroad company as amounts due the Smith Bridge Company for work done. 1740
The first is on the river bridge, and they all specify what they are on. They are estimates such as it was customary to make. We sometimes get a copy of them, and sometimes we do not. These are the regular estimates as returned by the engineer to the railroad company as being the amounts due the Smith Bridge Company.

24 Q. Among those estimates you have been identifying there are none of the estimates that have been paid; they do not include any of the estimates that were paid—I mean an estimate for $12,825 and another estimate for $4,725.

A. They were paid.

25 Q. Those are not included in these estimates, are they?

A. No, sir; those come later, and the other—that $4,000—was paid after this $8,000 estimate appears to be due.

26 Q. To make it short, the estimates that you have there in your hand which you have identified are estimates for work done and material furnished which have not been paid?

A. None of these, except this sum of $1,000, I presume should come off of this $5,175.

27 Q. The voucher dated July 6, 1883, contains that entry, does it not—that memorandum that $1,000 is to be taken out?

1741 A. This seems to be an estimate of the 150-ft. bridge on which the $1,000 was to apply. As to this estimate of $5,175 I will explain that the $1,000 that was paid in December was to apply on this voucher.

The petitioner introduces in evidence the estimates above referred to, dated July 6, Sept. 6, Oct. 6, 1883, and Feb. 5, 1884, and marked respectively Exhibits Smith Bridge Company Nos. 3, 4, 5, 6, & 7.

28 Q. As I understand you, you have not the first two original estimates?

A. I have not; amounting to some $17,000.

29 Q. I mean the two estimates—one for $12,825 and the other for $4,725, which were paid.

A. Yes, sir. We did not receive those vouchers at all. Those vouchers were sent directly to the company. We simply got the amounts the best we could. Sometimes we would get a copy of them sent to us.

By Mr. PIERCE:

30 Q. Where are those two vouchers that were paid?

A. I do not where they are.

By Mr. COOPER:

31 Q. Those amount to $12,825 and $4,725. What other payments, if any, have been made to the Smith Bridge Company for this work?

A. There was $1,000 paid in Dec., 1883.

32 Q. That was paid you?

1742 A. It was the understanding it was to apply on the Pine creek bridge. It was an advance payment. We declined to go ahead unless there was something advanced on it, and we got $1,000, which we applied on the Pine creek bridge.

33 Q. So in all you have been paid the total sum of $18,850?

A. Yes, sir.

34 Q. That includes all the payments?

A. Yes, sir.

35 Q. Did the company furnish anything outside of the bridge—in material?

A. They furnished 4,426 ft. of lumber for stringers, which, I think, we used on the trestle-work, perhaps.

36 Q. That is estimated in one of the estimates, is it not?

A. Yes, sir; the amount is $75.

37 Q. What was the total amount of work done, as appears by those estimates?

A. There is a little discrepancy in what the total amount should be. It is different from what it is returned to be by Mr. Peters there. The 150-ft. span—the Pine creek bridge—according to contract, should amount to $5,250, while these vouchers returned by Mr. Peters put it at $75 less.

38 Q. $5,250 is the contract price?

A. Yes, sir.

1743 39 Q. Take it, I mean, on the contract price. In the first place, I will ask you what was the total value of the Wabash bridge?

A. $34,200.

40 Q. What of the Pine creek bridge?

A. $5,250.

41 Q. And the extra timber for the trestle?

A. $75.24.

42 Q. Making in all how much?

A. $39,525.24.

43 Q. And the total payments of $18,550 deducted therefrom leaves a balance of how much?

A. $20,975.24.

44 Q. These bridges were all constructed and used in the road, were they?

A. Yes, sir; they were put in place on foundations furnished by the company.

45 Q. When did you see them last, either of them?

A. I do not recollect the date. I was there while they were putting up the Pine creek bridge after the river bridge was completed. Just the date I do not recollect.

46 Q. According to your information and belief are those bridges there yet?

A. Yes, sir; they were completed according to contract.

47 Q. How long have you been in the bridge business?

A. About nineteen years.

48 Q. Outside of any contract what was the reasonable value of these bridges as built?

A. The value of them is what our contract called for. That is the way we considered it anyway.

1744 49 Q. Do you now consider it as having been the fair value for those bridges?

A. Yes, sir; the price of bridges has changed some since then; it was a fair value for the bridges at that time.

50 Q. I will ask you whether you have talked with Mr. Henry

Crawford, who was at one time president of the Chicago & Great Southern Railway Company, about this work and your pay therefor?

A. Well, I have had several talks with him—I do not remember the dates—pressing him to pay us the balance due us.

51 Q. What was his reply; what was his statement?

A. He made repeated promises to pay on certain dates, but did not fulfill the agreement.

52 Q. What, if anything, did he state to you about the means of getting payment—his means of getting money to make payments with?

A. We had a good deal of talk at different times about raising funds and he said they would have funds in a short time to complete the payments.

53 Q. Did he state where he was going to get his money?

A. I do not know that he did and I do not know that he did not; he did a good deal of talking and made a good many promises.

1745 54 Q. I am asking you particularly with reference to whether he ever talked with you about the correctness of your account and as to whether the company really owed you the money or not.

A. There never seemed to be any dispute about that. A final settlement was made with him at Chicago — giving a check for the balance due us. That was according to our agreement.

55 Q. He gave you a check. Was that check ever paid?

A. No, sir.

56 Q. No part of it?

A. No, sir.

Cross-examination:

Questions by Mr. Pierce:

57 Q. Where is the check?

A. Mr. Tollerton has it. (Mr. Tollerton produces said check.)

The respondent offers said check in evidence, dated April 3, 1884, and signed by H. Crawford, with protest. A copy of said check and protest is allowed to go in instead of the original, which may be withdrawn. Said copy is marked Exhibit Smith Bridge Company No 8. (See page 202.)

58 Q. Was that check given to you for the amount of balance due you on those two bridges?

A. Yes, sir.

59 Q. You say there never seemed to be any dispute at all about the amount due you for building those two bridges?

A. No, sir.

1746 60 Q. But Mr. Crawford finally gave you that check in payment of the balance that was due you?

A. Yes, sir; it was done under the direction of the engineer, and there never has been any dispute about it.

By Mr. COOPER:

61 Q. Mr. Peters was the engineer?

A. Yes, sir.

62 Q. Did you take the check from Mr. Crawford yourself?

A. No, sir.

63 Q. The circumstances of the taking of the check you do not know anything about, except as you were told it?

A. No, sir.

By Mr. PIERCE:

64 Q. But your company took this check?

A. Yes, sir.

E. W. TOLERTON, being sworn, testifies as follows:

Direct examination:

Questions by Mr. COOPER:

1 Q. State your name.

A. E. W. Tolerton.

2 Q. State your occupation and residence.

A. I am an attorney-at-law in Toledo, Ohio.

3 Q. What connection, if any, have you with the Smith Bridge Company?

A. I am their attorney, and have been for a number of years.

4 Q. What have you had to do in the matter of the claim
1747 against the Chicago & Great Southern Railroad Company for
the Smith Bridge Company?

A. Since the claim was due, or very shortly afterwards, I have been prosecuting the claim for collecting. It has been in my hands for the purpose.

5 Q. Whom have you seen with reference to it on the part of the railroad company?

A. I have seen Mr. Porter, Henry Crawford, Mr. Nickerson, and Mr. Gage, of the First National Bank of Chicago; Mr. Pierce, of Crawfordsville, yourself, and others.

6 Q. When did you see Mr. Crawford first?

A. I first saw Mr. Crawford, I think, in the spring of 1884, either in February or March, according to my recollection, in Chicago.

7 Q. What took place between you and Mr. Crawford?

A. I first went to see him to see if I could not induce him to make arrangements to pay the claim, and he talked very fair and put me off with promises that he would pay it inside of fifteen or twenty days, and I returned home. I think at the expiration of a month I went to Chicago and saw him again, and at that time he said to me that he had made arrangements, and that he thought they would
certainly be completed, so that he could get the money inside
1748 of fifteen days to pay off this and other claims, and at that
interview he gave me the check, payable, I think, in thirty or forty days from the time he gave it to me. The check was drawn payable some time in the future—thirty or forty days from the time I saw him.

8 Q. That is the check introduced in evidence to which you refer, is it?

A. Yes, sir.

9 Q. The date it bears was thirty or forty days in advance of the time given.

A. Yes, sir. He wanted to give it in fifteen days, and I said to him if he would pay it in thirty or forty days I should be very glad, and put it so myself, so that he had plenty of time to arrange the matters he talked about.

10 Q. Did he make any objection to the amount due?

A. No, sir. I had the same bills that we have here now, and from those bills we made the computation and put it in that check.

11 Q. The check bears some interest.

A. Yes, sir.

12 Q. On what estimate did you base the interest?

A. From the dates of the estimates—the same estimates introduced in evidence here?

13 Q. Did you ever see him after that?

1749 A. Yes, sir. I saw him once after that, after the check had gone to protest; I was in Chicago; went up there, I think, to see other parties, and went to his office and requested him to take me down and introduce me to parties at the First National Bank, and he did so; took me down and introduced me to Mr. Gage, and Mr. Gage introduced me to Mr. Nickerson.

14 Q. What was the object taking you there?

A. I think I went at that time for the express purpose of seeing the parties at the First National Bank. My clients had been informed by Mr. Gage, I think, that they had some interest in that matter, and they wanted me to go and talk with the parties at the First National Bank, and see if I could not make some arrangement with them if they were interested in the road in providing for this claim. Mr. Crawford took me down and introduced me to Mr. Gage at my request.

15 Q. What took place between you and Mr. Gage and Mr. Nickerson?

A. Mr. Nickerson was not there at first, but I talked with Gage and told him I represented the Smith Bridge Company, and they were desirous of having their claim paid, and that the character of the claim was such as to make it a preferred claim, and we thought it ought to be paid and paid now.

1750 This answer is objected to by the respondent.

16 Q. That is, by virtue of the special lien?

A. He requested me to let him have the contract, and asked me if I had it, and I told him I had a copy, and I handed it to him and he kept it.

17 Q. Which one?

A. Both contracts.

18 Q. Mr. Gage is vice-president of the First National Bank?

A. Yes, sir.

19 Q. About when was this interview?

A. On the 4th of December. I went out on the evening of the 3rd, and that interview with him was on the 4th of December, 1884. He said to me that Mr. Porter was the man that I ought to see, as he was the most interested in the matter, and I sought to see him, but he was out of the city, and I did not get a chance to seem him.

20 Q. But you saw Mr. Nickerson while you were there?

A. Yes, sir.

21 Q. This was Samuel N. Nickerson, the president of the bank?

A. Yes, sir; he came in and I had an interview with him and Mr. Gage in the president's room.

22 Q. What did they say about any syndicate taking these bonds?

1751 A. They said there was a syndicate organized and they were then negotiating for the bonds. I asked Mr. Gage if they had them then in their possession and control and owned them, and he said not yet, and I asked him how long it would be before they would get them, and he said about the middle of January they would have them and would be able to negotiate them with us for our claim. I will say he told me most positively that he thought there would be no question but they would eventually own and control those bonds.

23 Q. Prior to this time, in the early part of 1884, did you take any steps to have the railway company notified that your company relied upon a special contract lien?

A. Only in my conversation with the president of the road, Mr. Crawford.

24 Q. Do you know anything about that document that is now shown you?

A. Yes, sir; I drew that up. This was drawn up by me at the date of the completion of the bridges. Mr. Smith came to me and as a result of that interview I drew up that paper and signed it and directed him what to do with it.

The petitioner introduces in evidence the notification referred to, signed by the Smith Bridge Company, by E. W. Tolerton, 1752 and dated Jan. 25, 1884. By permission the original paper is withdrawn and a copy furnished in its place, which copy is marked Exhibit Smith Bridge Company No. 9. (See page 205.)

The respondent objects to the introduction of said paper.

Witness continues: On my return, not being able to see Porter, I sat down next day and wrote him a letter, and those are the letters that have been introduced in evidence, and Mr. Porter replied to me. In a letter I wrote to him I enclosed a copy of the Wabash river bridge contract and he acknowledged the receipt of the copy of the contract.

25 Q. State whether you gave Mr. Crawford a receipt at the time he gave you the check.

A. Yes, sir.

26 Q. Was this check taken as payment?

A. No, sir; I gave him a receipt that when the check was paid that receipt was to be valid.

Cross-examination:

Questions by Mr. PIERCE:

27 Q. What did you give him when you took this check?

A. I gave him a receipt for the check, stating that when the check was paid it should be in payment of the Smith Bridge Company.

1753 28 Q. That receipt will show for itself, of course?

A. Yes, sir.

29 Q. The first interview you had with Mr. Crawford was along in the spring of 1884?

A. Yes, sir.

30 Q. Did he make any promises to you for the payment of this bill before the time this check was finally given?

A. Yes, sir.

31 Q. What did he say to you about his making arrangements to get money to pay this bill?

A. He said he thought that in a few days he would have the money so that he could pay this and other claims.

32 Q. How did he expect to get the money?

A. I do not know that he said anything except that he was making negotiations.

33 Q. Did he say he was trying to negotiate the bonds of the company?

A. I think he said he was negotiating with a gentleman by the name of Mr. Porter.

34 Q. Did you say that was in the spring of 1884?

A. I was there several times, and I may get these interviews confused as to dates.

35 Q. In the spring of 1884, shortly after this bill was filed, and
when it first came into your hands for collection, when
1754 you talked to him about its being paid, did he not tell you
he was negotiating the sale of his bonds on the road?

A. No, sir.

36 Q. And that he expected to raise money in that way to pay his bills?

A. No, sir; I think not.

37 Q. Did he tell you simply that he was trying to negotiate to raise some money?

A. Yes, sir. The first interview I had he told me he expected to have the money very soon to pay the claim; afterwards he spoke of his negotiations with Porter.

38 Q. Afterwards, you say. When was that—was it in the fall?

A. When he gave the check he spoke then of negotiating with Porter, and I called in the morning and he said, "You be in here at 2.00 or 2.30 and I will see Mr. Porter in the meantime, and I may have the money for you before you leave the city to-night for Toledo;" and I told him I would be very grateful if he would, and I went and took my dinner, and along in the afternoon I went to see him, and he said he had failed to see Mr. Porter and make the arrangements to receive the money, and I said I must have some

1755 satisfaction or I would take the bill in my pocket and go to Indianapolis and file it, and the result was this check.

39 Q. You had these estimates with you when you had that conversation with Mr. Crawford?

A. I had the statements of the Smith Bridge Company that have been introduced in evidence here.

40 Q. And you sat down with Mr. Crawford and ran through them and made a settlement about the amount due?

A. Yes, sir.

41 Q. And it resulted in the amount and interest that is included in this check?

A. Yes, sir.

42 Q. And he gave you this check?

A. Yes, sir.

43 Q. And for it you gave him the receipt you spoke of?

A. Yes, sir.

44 Q. And the receipt he has?

A. Yes, sir; he ought to have it.

1756 EXHIBIT SMITH BRIDGE CO., No. 1.

This agreement, made and entered into on this 26th day of October, 1882, by and between the Smith Bridge Company of Toledo, Lucas county, in the State of Ohio, party of the first part, and the Chicago & Great Southern Railway Company, a corporation formed under and pursuant to the laws of the State of Indiana, party of the second part, witnesseth:

That whereas the party of the first part has this day and doth by these presents contract and agree to construct and build for the party of the second part a bridge over and across the Wabash river at or adjacent to the town or city of Attica, in the State of Indiana, consisting of six (6) spans of one hundred and fifty (150) feet each, of the pattern and style known as the Pratt combination truss, with the Smith improvement, of the capacity of thirty-five hundred pounds (3,500) per lineal foot, on a factor saf-ty of five (5), all in accordance with the plans and specifications hereunto attached, marked Exhibits "A" and "B," and referred to and made part of this agreement, to be fully completed, including the track-stringers, ready to receive the ties, and placed upon the piers and abuttments prepared to receive the bridge constructed by the party of the second part in the Wabash river at Attica aforesaid.

1757 For which bridge the said part- of the first part is to receive the sum of thirty-eight ($38.00) dollars per lineal foot, making the sum of thirty-four thousand and two hundred ($34,200.00) dollars, for said bridge, upon the terms and conditions hereinafter contained.

And the party of the second part agrees upon its part to pay said party of the first part said sum of thirty-eight ($38.00) dollars per lineal foot, or in all the sum of thirty-four thousand and two hundred ($34,200) dollars, for such bridge.

It being understood that said bridge is to be in all respects first-class and to be made of good material, subject to inspection and approval of the engineer in charge of said work.

Payments to be made as follows, except otherwise agreed by the parties hereto:

On or about the first of each and every month the party of the second part shall by its chief engineer cause estimates to be made of the amount and value of the bridge material and work done on the same, delivered at the place of the erection of said bridge, and also estimates of the amount and value of the bridge as placed in position, and the party of the second part shall pay the value of such estimates less ten per cent. retained until the bridge is fully completed, and the money due on such estimates to be paid on
1758 or about the 15th of each month, upon final estimate and
completion of the bridge. The balance due thereon is to be paid in accordance with the foregoing contract and price of said bridge, at which time the title of said bridge is to vest in said party of the second part, but during the construction of said bridge and until the contract price shall have been fully paid the title of said bridge and material shall be and remain in the party of the first part as their individual property. And in default of payment of the contract price of said bridge the party of the first part reserves the right to remove said bridge and bridge material.

CHICAGO & GREAT SOUTHERN RAILWAY COMPANY,
By H. CRAWFORD, JR., *Sec'y & Treas'r.*
THE SMITH BRIDGE CO.,
By R. W. SMITH, *Pres.*

CHICAGO, *Dec.* 2, 1882.

For value received I hereby guarantee the due performance by the Chicago & Great Southern Railway Company of all the covenants and payments by it agreed to be performed in the foregoing contract.

HENRY CRAWFORD.

1759 EXHIBIT SMITH BRIDGE COMPANY NO. 2.

This agreement, made and entered into this 24th day of July, 1883, by and between the Smith Bridge Company of Toledo, Lucas county, in the State of Ohio, party of the first, and the Chicago & Great Southern Railway Company, a corporation formed under and pursuant to the laws of the State of Indiana, party of the second part, witnesseth:

That whereas the party of the first part has this day and doth by these presents contract and agree to construct and build for the party of the second part a bridge over and across Pine creek, at or near the town or city of Attica, in the State of Indiana, consisting of one (1) span of one hundred and fifty feet (150 ft.) of the pattern and style known as the Pratt combination truss, with the Smith improvement, of the capacity of thirty-five hundred (3,500) pounds per lineal foot, on a factor safety of five (5); all in accordance with the

plans and specifications hereunto attached, which are to be a duplicate of the spans erected over the Wabash river at Attica, Indiana, built by the Smith Bridge Co., for which bridge the said
1760 party of the first part is to receive the sum of thirty-five (35.00) dollars per lineal foot, making the sum of fifty-two hundred and fifty ($52.50) dollars for the said bridge, upon the terms and conditions hereinafter contained.

And the party of the second part agrees upon its part to pay said party of the first part said sum of thirty-five ($35.00) dollars per lineal foot, or in all the sum of fifty-two hundred and fifty dollars ($5,250) for said bridge, it being understood that said bridge is to be in all respects first class, and to be made of good material, subject to inspection and approval of the engineer in charge of said work.

Payments to be made as follows, except otherwise agreed by the parties hereto: On or about the first of each and every month the party of the second part shall by its chief engineer cause estimates to be made by the amount and value of the bridge material and work done on the same, delivered at the place of the erection of said bridge, and also estimates of the amounts and value of the bridge as placed in position, and the party of the second part shall
1761 pay the value of such estimates, less ten per cent. retained until the bridge is fully completed, and the money due on such estimates to be paid on or about the 15th of each month. Upon final estimate and completion of the bridge the balance due thereon bridge, is to be paid in accordance with the contract and price of said At which time the title of said bridge is to vest in said party of second part; but during the construction of said bridge, and until the contract price shall have been fully paid, the title of said bridge and bridge material shall be and remain in the party of the first part as their individual property, and in default of payment of the contract price of said bridge the party of the first part reserves the right to remove said bridge and bridge material.

CHICAGO & G. SOUTHERN R'Y CO.,
By HENRY CRAWFORD, *Pres.*

TOLEDO, OHIO, *Dec.* 18*th*, '83.

For value received I hereby guarantee the due performance by the Chicago and Great Southern Railway Company of all the covenants and payments by it agreed to be performed in the foregoing contract.

HENRY CRAWFORD.

1762 EXHIBIT SMITH BRIDGE CO. No. 3.

Chicago & Great Southern Railway Company to the Smith Bridge Co. of Toledo, Ohio, Dr.

1883, July 6.

Estimate for June, 1883. Pratt combination truss bridge for Wabash river, Attica, Ind.

450 lin. ft. in place, @ 35.00	15,750
300 " delivered, @ 25.00	7,500
	23,250
Less 10%	2,325
	20,925
Deduct previous estimate	12,825
Net est.	8,100

This estimate is correct.

T. H. PETERS, *Ch'f Eng.*

This voucher is subject to a credit of $1,000, paid Dec., 1883.

Received ——, 188—, of the Chicago & Great Southern Railway Co. the sum of eight thousand one hundred dollars ($8,100.00) in full for the above account.

1763 EXHIBIT SMITH BRIDGE CO. No. 4.

Chicago & Great Southern Railway Co. to Smith Bridge Co., of Toledo, Ohio, Dr.

1883, Sept. 6.

August. Estimate for August, 1883. Pratt combination truss bridge for Wabash river, Attica, Ind.

900 lin. ft. in place, @ 36.00	32,400
Less 10 %	3,240
	29,160
Deduct previous estimates	25,650
	$3,510

Approved.

F. H. PETERS, *Ch'f Eng.*

Received ——, 188—, of the Chicago & Great Southern Railway Co. the sum of three thousand five hundred and ten dollars ($3,510.00) in full for the above account.

Duplicate No. 4.

Chicago & Great Southern Railway Co. to Smith Bridge Co. of Toledo, Ohio, Dr.

1883, Sept. 6.

August. Pratt combination truss bridge for Wabash river, Attica, Ind.

900 lin. ft. in place, @ 36.00	32,400
Less 10%	3,240
	29,160
Deduct previous estimates	25,650
	$3,510

Approved.

F. H. PETERS, *Ch'f Eng.*

Received ——, 188—, of the Chicago & Great Southern Railway Co. the sum of three thousand five hundred and ten dollars ($3,510.00) in full for the above account.

1764 EXHIBIT No. 5.

Chicago & Great Southern Railway Company to the Smith Bridge Co., of Toledo, Ohio, Dr.

1883, Oct. 6.

Final estimate of Pratt combination truss bridge, Wabash river, Attica, Ind. Built under contract of Oct. 26, 1882.

6 spans 150=900 lineal feet @ 38.00		$34,200
Deduct estimates for April, '83	4,455	
May, "	8,370	
June, "	8,100	
July, "	4,725	
August, "	3,510	
		29,160
Net est		$5,040

I hereby certify that this account is correct and approved.

F. H. PHILLIPS, *Ch'f Eng.*

Received ——, 188—, of the Chicago & Great Southern Railway Co. the sum of five thousand and forty dollars ($5,040.00) in full for the above account.

EXHIBIT No. 5.

(Duplicate.)

Chicago & Great Southern Railway Company to the Smith Bridge Co., of Toledo, Ohio, Dr.

1883, Oct. 6.

1765 Final estimate of Pratt combination truss bridge, Wabash river, Attica, Ind. Built under contract of Oct. 26, 1882.

6 spans 150=900 lineal feet @ 38.00		34,200
Deduct estimates for April, 1883	4,455	
May, "	8,370	
June, "	8,100	
July, "	4,725	
August, "	3,510	
		29,160
Net est		5,040

I hereby certify that this account is correct and approved.

F. H. PETERS, *Ch'f Eng.*

Received ——, 188—, of the Chicago & Great Eastern Railway Co. the sum of five thousand and forty dollars ($5,040.00) in full for the above account.

EXHIBIT No. 6.

Chicago & Great Southern Railway Co. to Smith Bridge Co., of Toledo, Ohio, Dr.

1884, Feb. 5.

Jan'y. Timber used for stringers:

20 ps. 6″x 15″—29′—6″=4,426 B. M. @ 1,700 75,24

I hereby certify that this account is correct and approved.

F. H. PETERS, *Ch'f Eng.*

Received ——, 188—, of the Chicago & Great Southern Railway Co. the sum of seventy-five .24 dollars ($75.24) in full for the
1766 above account.

EXHIBIT No. 7.

Chicago & Great Southern Railway Company to the Smith Bridge Company, of Toledo, Ohio, Dr.

1884, Feb'y 5.

Final estimate of Pratt combination truss bridge for Pine creek, near Attica, Indiana.

1 span 150 lin. ft. @ 34.00 .... $5,175

I hereby certify that this account is correct. Approved.

F. H. PETERS, *Ch'f Eng.*

Received ——, 188—, of the Chicago & Great Southern Railway Co. the sum of five thousand one hundred and seventy-five dollars ($5,175.00).

1767 EXHIBIT SMITH BRIDGE COMPANY No. 8.

No. 0501. CHICAGO, *April* 3, 1884.

First National Bank pay to the order of the Smith Bridge Company twenty-one thousand six hundred thirty-seven and $\frac{54}{100}$ dollars.

$21,637.54. H. CRAWFORD.

Protested for non-payment 4-3-'84, 1st. N. B.

(On the back of this check appears the following endorsement :)

Pay to the order of C. C. Doolittle, cashier the Smith Bridge Company.

WM. S. DALY, *Sec'y.*

Pay to H. R. Symonds, cas., or order for account of Merchants' Nat'l Bank.

Coll'd. 8,381.

Toledo, Ohio.

CHAS. C. DOOLITTLE, *Cashier.*

(The following is attached to said check :)

STATE OF ILLINOIS, } *ss:*
Cook County, }

Be it know- that on this 3rd day of April, in the year of our Lord one thousand eight hundred and eighty-four, I, Orville Peckham, a notary public, duly commissioned and sworn, and residing in the city of Chicago, in said county and State, at the request of the First
National Bank of Chicago, went with the original instrument,
1768 which is above attached, to the office of First Nat. Bank and
presented it to the person in charge and demand- payment
thereon, which was refused; whereupon I, the said notary, at the request of the aforesaid —, did protest, and by these presents do solemnly protest, as well against the makers of said instrument, the endorsers thereof, as all others whom it doth or may concern, for exchange, re-excharge, and all costs, charges, damages, and interest already incurred by reason of the non-payment of said instrument.

And I, the said notary, do hereby certify that within forty-eight hours from the time of such protest due notice thereof was put in the post office at Chicago as follows:

Notice for First National Bank, Chicago.
" " H. Crawford, "
" " Smith Bridge Company with Merchants' Nat. Bank., Toledo, Ohio.

The above-named places being the reputed places of residence respectively of the persons to whom such notice was directed.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year above written.

[SEAL.] ORVILLE PECKHAM,
Notary Public.

Fees.—Noting for protest, 25 cents; protest, 75 cents; notices, $1.00; seal and certificate, 25 cents; postage, 6 cts.; notary protest, $2.56, vol. 12, page 446.

1769 (The following is also attached to the check:)

TOLEDO, OHIO, *April* 2, 1884.

Telegraph Smith Bridge Co., Toledo, Ohio., whether good or not.
W.

EXHIBIT SMITH BRIDGE CO. NO. 9.

To Henry Crawford, president, and F. H. Peters, engineer, of the Chicago & Great Southern Railroad Co.:

You are hereby notified that the Smith Bridge Company will retain possession and control of the bridges built by said company on the line of said railroad over Pine creek and the Wabash river, in the State of Indiana, until said bridges are entirely paid for as provided in contract. And said railroad company is hereby notified that it is not allowed to use said bridges in the operation of its road until payment for the bridges is fully made.

January 24th, 1884. THE SMITH BRIDGE CO.,
By E. W. TOLERTON, *Its Att'y.*

Served a copy of this notice on said Henry Crawford, Jr., president, this 26th day of January, 1881. P. E. LANE.

Subscribed and sworn to before me this 25th day of January, 1884.

[SEAL.] D. HARRY HAMMOND,
Notary Public.

1770 ***Exhibits and Documentary Evidence Prepared on Behalf of Defendants.***

Proceedings of county commissioners' court of Benton county, Indiana, relative to aid voted by Oak Grove and Union townships for the construction of the Indiana and Chicago (afterwards the Chicago and Great Southern) Railway Company.

EXHIBIT Q. John Gray, special commissioner.

STATE OF INDIANA, *Benton County:*

Commissioners' Court. Special April session. 1880, second day, the same being Friday, April 16, 1880.

Comes now T. C. Annibal and presents the following petition of sundry persons, to wit:

To the honorable board of county commissioners of Benton county, in the State of Indiana:

We, the undersigned freeholders of Union township, Benton county, in the State of Indiana, would most respectfully petition your honorable board and show that the Indiana and Chicago Railway Company, a corporation legally formed under and pursuant to the laws of the State of Indiana, for the purpose of constructing a railroad from a point on the State line of Indiana and Illinois, from or near the northwest corner of the southwest quarter of section number thirty-six, in township number thirty-eight north, of range 10 west, in Lake county, in the State of Indiana, to the city of Attica, in the county of Fountain, in the State of Indiana, passing in and through said Union township, in Benton county, Indiana, the construction of which said road will be of great value and, benefit to said Union township aforesaid.

We, the freeholders of Union township aforesaid, respectfully petition your honorable board that Union township, of Benton county, and State of Indiana, as aforesaid, makes an appropriation of ($9,000) nine thousand dollars to aid in the construction of the said Indiana and Chicago Railway Company's road in and through said township, not, however, exceeding two per centum of the taxable property of said township, as shown by the tax duplicate of said township for the previous year, one-half of the appropriation to be paid when said road shall be completed and a train of cars pass over the same from the center of said Union township, or as near there as a station can be located to the town of Goodland, in Newton, Ind., and the other half when said road road shall be completed and trains pass over the same to the Lake Erie and Western road, in Benton county, Indiana, and for which we will forever pray.

Union township, Benton county, Ind., Mar. 23d, 1880.

1. John W. Swan.
2. Paul King.
3. Hiram Gilson,
4. Jasper Shear.
5. W. B. Rowley.
6. A. W. Williams.
7. Amos Haganbach.
8. Jacob R. Prince.

1771 9. Eph Sayers.

10. Charles J. Wilson.
11. David H. Fullerton.
12. H. O. Bingham.
13. Adolphus Bartaway.
14. Charles A. Nutts.
15. P. J. Rowley.
16. W. F. Prince.
17. Richard Brown.

Thomas P. Gray.
Austin V. Flint.
John Cochran.
D. C. Denniston.
John Dudgeon.
Joseph Monty.
George H. Smith.
Wm. H. Bingham.
Ben Davidson.
Isaac Armfield.
Blake Wilson.
John Kaar.
Thomas G. Daniels.

Which said petition is taken under advisement, and the board of commissioners being satisfied that said railway company is a corporation duly organized under the laws of the State of Indiana, and that said petition has been properly signed by the requisite number, to-wit: more than twenty-five freeholders of Union township, Benton county, Indiana, do make the following order, viz:

Order No. "A."

It is hereby ordered that an election be held in Union township, Benton county, Indiana, at the usual place for holding elections, on the 22d day of May, A. D. 1880, for the purpose of voting upon the proposition of Union township aiding the Indiana and Chicago Railway Company in the construction of its road through said township by said township making an appropriation to said railway company, in the sum of nine thousand dollars, as is asked for by a petition filed with this court. And the auditor shall immediately give notice to be published for at least four weeks successively in the Fowler Era, a weekly newspaper of general circulation in the county, and also by printed handbills, to be posted in the public places in said township of Union aforesaid, which said publication and handbills shall also contain the terms and conditions upon which said contemplated appropriation shall become payable as set forth in said petition, which handbills shall be posted by the sheriff of the county three weeks prior to the day fixed for taking the vote of the township of Union aforesaid, as is provided by statute in such cases.

STATE OF INDIANA, *Benton County:*

Commissioners' Court. Second Special April session, 1880, first day, the same being Friday, April 30, 1880.

Comes now Thurman C. Annibal and presents the following petition of sundry persons, to-wit:

To the honorable board of county commissioners of Benton county, of the State of Indiana:

We, the undersigned freeholders of Oak Grove township, Benton county, in the State of Indiana, would most respectfully petition your honorable board and show:

That the Indiana and Chicago Railway Company, a corporation legally formed under and pursuant to the laws of the State of Indiana for the purpose of constructing a railroad from a point on the State line of Indiana and Illinois from or near the northwest corner of the southwest quarter of section number thirty-six, in township number thirty-eight north, of range ten west, in Lake
1772 county, in the State of Indiana, to the town of Attica, in the
county of Fountain, in the State of Indiana, passing in and through said Oak Grove township, in Benton county, the construction of which railroad will be of great value and benefit to said Oak Grove township aforesaid.

We, the freeholders aforesaid, respectfully petition your honorable board that Oak Grove township, of Benton county and State of Indiana, as aforesaid, make an appropriation of fifteen thousand dollars to aid in the construction of said Indiana and Chicago Railway Company's road in and through said township, not, however, exceeding two per centum of the taxable property of said township, as shown by the tax duplicate of said township for the previous year, on condition that one-half of said appropriation asked for in this petition shall be payable to said railway company when said road shall be so far completed as a train of cars can pass over the same from the town of Goodland, Newton county, Indiana, to the town of Oxford, Benton county, to form a connection with Lake Erie and Western Railway Company within the corporate limits of said town of Oxford, where a station shall be established and maintained, and the other half of said appropriation shall be payable when said road is so completed from the town of Attica, Indiana, through Warren and Benton counties, by way of said town of Oxford, through Newton county, via the town of Goodland, to such point north as to form a connection and line to the city of Chicago, Illinois.

Oak Grove township, Indiana, April 16, 1880.

John Campbell.
John P. Ross.
Conrad H. Zeis.
Hiram Benedict.
Samuel Phares.
Robert Wood.
John J. Ripple.
Jacob S. Albaugh.
W. M. Sleeper.
John E. Morgan.
Elijah Seward.
Jonathan Kolb.
David McConnell.
Allen W. Wells.
Edward Forbes.
William L. Kirkpatrick.
William R. Menefre.
William M. Scott.
Jacob Benedict.
John M. Thomas.
Jasper N. McConnell.
John M. Freeman.
Joe F. Sleeper.
Isaac W. Lewis.
Alonzo D. Sleeper.
Aaron D. Huffman.
August Koch.
John M. Crosson.
Mark J. Briar.
Alonzo Cowgill.
Cyrus Foltz.
Alger N. Smith.
G. W. Bliss.
William M. McConnell.

Which said petition is taken under advisement, and the board of commissioners being satisfied that said railway company is duly organized under and pursuant to the laws of the State of Indiana, and that said petition has been properly signed by the requisite number, to wit, more than twenty-five freeholders of Oak Grove township, Benton county, Indiana, do make the following order, viz:

Order No. "A."

It is hereby ordered that an election be held in Oak Grove township, Benton county, Indiana, at the usual place for holding elections, on Tuesday, the 1st day of June, 1880, for the purpose
1773 of voting upon the proposition of Oak Grove township aiding the Indiana and Chicago Railway Company in the construction of its road through said township, by said township making an appropriation to said railway company in the sum of fifteen thousand dollars, as is asked by a petition filed with this court; and the auditor shall immediately give notice to be published for at least four weeks successively in the Oxford Tribune, a newspaper of general circulation in the county, and also by printed handbills to be posted in ten public places in the township of Oak Grove aforesaid, which handbills shall be posted by the sheriff of

the county three weeks prior to the day fixed for the taking the vote of the township of Oak Grove aforesaid, which publication and handbills shall contain the terms and conditions as set out by said petition in relation to time of payment of said appropriation and the establishing and maintaining stations as is provided by statute in such cases.

THE STATE OF INDIANA, } *ss:*
Benton County, }

I, James S. Bradley, auditor in and for said county and State, do hereby certify that on Friday, April 16, 1880, the same being the second judicial day of a special session of the board of commissioners of said county and State, on a petition filed by John W. Swan and others, said board ordered that the voting place of Union township, in said Benton county, in the State of Indiana, be opened upon Saturday, May 22, 1880, for the purpose of taking the votes of the legal voters of said township of Union upon the subject of appropriating nine thousand dollars by said township to aid in the construction of the Indiana and Chicago railroad through said township, as prayed for in said petition, and that the county auditor give due and legal notice to the qualified voters of said township of the opening of the polls; that in pursuance of said order the following notice was given, to wit:

Railroad Election.

To the qualified voters of Union township, Benton county, Indiana:

Pursuant to an order of the board of commissioners of Benton county, Indiana, notice is hereby given that the voting places in the precincts in said Union township will be open on Saturday, the 22d day of May, A. D. 1880, for the purpose of taking the votes of the legal voters of said Union township for or against the appropriation of nine thousand dollars, said appropriation of nine thousand dollars to be levied and collected by taxation on and from Union township on the taxable property thereof, to be used in aid *for* the construction of the Indiana and Chicago Railroad Company's railroad through said Union township, upon such terms and conditions as the statute directs, in the discretion of the board of commissioners under the statutes provided in such cases. Said appropriation, as asked for in the petition filed with the county commissioners, contains the following terms and conditions as to time of payment of the same, viz: One-half of the appropriation to be paid when said road shall be completed and a train of cars [pass] over the same from the
center of said Union township, or as near there as a station
1774 can be located to the town of Goodland, in Newton county,
Indiana, and the other half when said road shall be completed and trains pass over the same to the Lake Erie and Western road in Benton county, Indiana, and that said appropriation of money be paid to said railway company or its assigns for the purpose aforesaid, subject to the provisions and limitations of existing laws. Said appropriation is for the construction of the aforesaid rail-

way through Union township, and the ballots shall read, "For the railroad appropriation" or "Against the railroad appropriation."

Dated April 17, 1880.

JAMES S. BRADLEY,
Auditor Benton County, Indiana.

That said notice was given by publication in the Fowler Era, a weekly newspaper of general circulation, published in said county; that said notice was published in said paper first on Thursday, April 22, 1880, and once each week thereafter until Thursday, May 20, 1880, being five successive weekly publications prior to said 22d day of May, 1880; that I also caused to be printed and delivered to the sheriff of said county a sufficient number of notices in the words and figures of the above to post one in each of the ten most public places in the said Union township, county and State aforesaid, as provided by law.

In testimony whereof I hereunto subscribe my name and affix the seal of said board of commissioners this 21st day of May, 1880.

[SEAL.] JAMES S. BRADLEY,
Auditor, Benton County, Indiana.

Recorded May 22, 1880.

JAMES S. BRADLEY,
Auditor B. C.

I, Theophilus K. Harmon, sheriff of Benton county, in the State of Indiana, hereby certify that I posted ten (10) notices, of which the following is a true and correct copy:

Railroad Election.

To the qualified voters of Union township, Benton county, Indiana:

Pursuant to an order of the board of commissioners of Benton county, Indiana, notice is hereby given that the voting places in the precincts in said Union township will be open on Saturday, the 22d day of May, A. D. 1880, for the purpose of taking the votes of the legal voters of said Union township for or against the appropriation of five thousand dollars, said appropriation of nine thousand dollars to be levied and collected by taxation on and from Union township on the taxable property thereof, to be used in and for the construction of the Indiana and Chicago Railway Company's railroad through said Union township, upon such terms and conditions as the statutes direct, in the discretion of the board of commissioners under the statutes provided in such cases. Said appropriation as asked for in the petition filed with the county commissioners contains the following terms and conditions as to time of payment of the same, viz: One-half of the appropriation to be paid when said road shall be completed and a train of cars pass over the same from the center of said Union township, or as near there as a station can be located, to the town of Goodland, in Newton 1775 county, Indiana, and the other half when said road shall be completed and trains pass over the same to the Lake Erie and Western road, in Benton county, Indiana, and that said appropriation of money be paid to said railway company or its assigns, for the purpose aforesaid, subject to the provisions and limitations of existing laws. Said appropriation is for the construction of the aforesaid railway through Union township, and the ballots shall read, For the railroad appropriation, or Against the railroad appropriation.

Dated April 17th, 1880.

JAMES S. BRADLEY,
Auditor Benton County, Indiana.

In ten (10) of the most public places in Union township, Benton county, in the State of Indiana, on the 21st day of April, 1880, the same being more than three weeks prior to the 22d day of May, 1880.

In witness whereof I have hereunto set my hand this 21st day of May, A. D. 1880.

THEOPH. K. HARMON,
Sheriff Benton County, Indiana,
By FRED. SHUTZ, *Deputy.*

Recorded May 21st, 1880.

JAMES S. BRADLEY,
Auditor Benton Co.

Statement of the Canvassing Board of the Railroad Election Held in Union Township May 22, 1880.

Be it known that on Thursday, the 27th day of May, 1880, the undersigned board of canvassers of a special election held in Union township, in Benton county, in the State of Indiana, on Saturday, the 22d day of May, 1880, for the purpose of taking the votes of the legal voters of said township on the subject of appropriating nine thousand ($9,000) dollars by said township to aid in the construction of the Indiana and Chicago railroad through said township, met in the auditor's office in Fowler, in Benton county, in the State of Indiana, between the hours of ten, (10) o'clock a. m. and four (4) o'clock p. m. to canvass and estimate the certificates, poll-book, and tally-sheet of said election, and organized by electing Maurice N. Pelton chairman, James S. Bradley, auditor of said county, being *ex-officio* clerk of said board. After carefully comparing and examining the same certificate, poll-book, and tally-sheet of said election, the vote is found to be as follows, to wit: The whole number of votes cast at said election is one hundred and twenty-eight (128); the number of votes cast for the railroad appropriation is eighty-eight (88); the number of votes cast against the railroad appropriation is thirty-four (34), and six votes thrown out for informality.

In testimony whereof we hereunto subscribe our names, at the court-house in Fowler, Indiana, this 27th day of May, A. D. 1880.

MAURICE N. PELTON,
JAMES D. WOODBURN,
D. C. DENNISTON,
Board of Canvassers.

Attest: JAMES S. BRADLEY,
Auditor and Ex-Officio Clerk of the Board.

Recorded May 27th, 1880.

JAMES S. BRADLEY,
Auditor B. Co.

1776 THE STATE OF INDIANA, *Benton County,* } *ss:*

I, James S. Bradley, auditor in and for said county and State, do hereby certify that on Friday, the 30th day of April, A. D. 1880, the same being the first judicial day of a special session of the board of commissioners of said county and State on a petition filed by John Campbell and others, said board ordered that the voting place of Oak Grove township in said Benton county, in the State of Indiana, be opened on Tuesday, the first day of June, A. D. 1880, for the purpose of taking the votes of the legal voters of said township. of Oak Grove upon the subject of appropriating fifteen thousand ($15,000) dollars by said township to aid in the construction of the Indiana and Chicago railroad through said township as prayed for in said petition, and that the county auditor gave due and legal notice to the qualified voters of said township of the opening of the polls; that in pursuance of said order the following notice was given, to wit:

Railroad Election.

To the qualified voters of Oak Grove township, Benton county, Indiana:

Pursuant to an order of the board of commissioners of Benton county, Indiana, notice is hereby given that the voting places in the precincts in said Oak Grove township will be open on Tuesday, the first day of June, A. D. 1880, for the purpose of taking the votes of the legal voters of said Oak Grove township for or against the appropriation of fifteen thousand dollars, said appropriation of fifteen thousand dollars to be levied and collected by taxation on and from Oak Grove township on the taxable property thereof, to be used in aid for the construction of the Indiana and Chicago Railway Company through said Oak Grove township, upon such terms and conditions as the statutes direct in the discretion of the board of commissioners under the statutes provided in such case, subject, nevertheless, to the following conditions as set forth in said petition, to wit: That one half of such appropriation asked for in said petition shall be payable to said railway company when said road shall be so far completed as a train of cars can pass over the same from the town of Goodland, Newton county, Indiana, to the town of Oxford,

Benton county, to form a connection with the Lake Erie and Western Railway Company within the corporate limits of the said town of Oxford, where a station shall be established and maintained, and the other half of said appropriation shall be payable when said road is so far completed from the town of Attica, Indiana, through Warren and Benton counties by the way of said town of Oxford through Newton county via the town of Goodland to such point north as to form a connection and line to the city of Chicago, Illinois, and the said appropriation of money be paid to said railway company, or its assigns, for the purpose aforesaid, subject to the provisions and limitation of existing laws. Said appropriation is for the construction of the aforesaid railway through Oak Grove township, and
1777 the ballots shall read, For the railroad appropriation or
Against the railroad appropriation.

Fowler, Indiana, April 30, 1880.

JAMES S. BRADLEY,
Auditor Benton County, Indiana.

That said notice was given by publication in "The Oxford Tribune," a weekly newspaper of general circulation published in said county; that said notice was published in said paper first on Friday, April 30, 1880, and once each week thereafter until Friday, May 21, 1880, inclusive, being four successive weekly publications prior to said first day of June, A. D. 1880; that I also caused to be printed and delivered to the sheriff of said county a sufficient number of notices, in the words and figures of the above, to post one in each of the ten most public places in the said Oak Grove township, county and State aforesaid, as provided by law.

In testimony whereof I hereunto subscribe my name and affix the seal of said board of commissioners, at Fowler, this first day of June, A. D. 1880.

[SEAL.]

JAMES S. BRADLEY,
Auditor Benton County, Indiana.

Recorded June 19, 1880.

J. S. BRADLEY, *A. B. Co.*

I, Theophilus K. Harmon, sheriff of Benton county, in the State of Indiana, hereby certify that I posted ten (10) notices, of which the following is a true and correct copy:

Railroad Election.

To the qualified voters of Oak Grove township, Benton county, Indiana:

Pursuant to an order of the board of commissioners of Benton county, Indiana, notice is hereby given that the voting places in the precincts in said Oak Grove township will be open on Tuesday, the 18th day of June, A. D. 1880, for the purpose of taking the votes of the legal voters of said Oak Grove township for or against the appropriation of fifteen thousand dollars, said appropriation of fifteen thousand dollars to be levied and collected by taxation on and from Oak Grove township on the taxable property thereof, to be used in

aid for the construction of the Indiana and Chicago Railway Company's railroad through said Oak Grove township, upon such terms and conditions as the statutes direct in the discretion of the board of commissioners under the statutes provided in such cases, subject, nevertheless, to the following conditions as set forth in said petition, to wit: That one-half of such appropriation asked for in said petition shall be payable to said railway company when said road shall be so far completed as a train of cars can pass over the same from the town of Goodland, Newton county, Indiana, to the town of Oxford, Benton county, to form a connection with the Lake Erie and Western Railway Company within the corporate limits of the said town of Oxford, where a station shall be established and maintained; and the other half of said appropriation shall be paid when said road is so far completed from Attica, Indiana, through Warren and Benton counties, by the way of the said town of Oxford,
1778 through Newton county, via Goodland, to such point north as
to form a connection and line to Chicago, Illinois, and that such appropriation of money be paid to said railway company or assigns for the purpose aforesaid, subject to the provisions and limitations of existing laws. Said appropriation is for the construction of the aforesaid railway through Oak Grove township.

And the tickets shall read, "For the railroad appropriation," or "Against the railroad appropriation."

Fowler, Ind., April 30, 1880.

JAMES S. BRADLEY,
Auditor Benton County.

In ten (10) of the most public places in Oak Grove township, in Benton county, in the State of Indiana, on the 3d day of May, A. D. 1880, the same being more than three weeks prior to the 1st day of June, A. D. 1880.

In testimony whereof I have hereunto set my hand this 1st day of June, 1880.

T. K. HARMON,
Sheriff Benton County, Indiana,
By F. A. STOKES, *Deputy.*

Recorded June 1, 1880.

JAMES S. BRADLEY, *A. B. Co.*

Statement of the Canvassing Board of the Railroad Election held in Oak Grove Township on Tuesday, June 1, 1880.

Be it known that on Thursday, the 3d day of June, A. D. 1880, the undersigned board of canvassers of a special election held in Oak Grove township, in Benton county, in the State of Indiana, on Tuesday, the 1st day of June, 1880, for the purpose of taking the votes of the legal voters of said township on the subject of appropriating fifteen thousand ($15,000) dollars by said township to aid in the construction of the Indiana and Chicago railway through said township, assembled in the auditor's office, in Fowler, in Benton county, in the State of Indiana, between the hours of ten (10) o'clock a. m. and four (4) o'clock p. m., to canvass and estimate the certificate, poll-book, and tally-sheet of said election, and organized by selecting Robert Wood chairman, James S. Bradley, auditor of said Benton county, being *ex-officio* clerk of said board. After carefully comparing and examining the said certificate, poll-book, and tally-sheet of said election, the vote is found to be as follows, to wit: The whole number of votes cast at said election is three hundred and twenty-five (325). The number of votes cast for the railroad appropriation is two hundred and forty-nine (249). The number of votes cast against the railroad appropriation is seventy-five (75), and one vote thrown out for informality.

In testimony whereof we hereunto subscribe our names, at the court-house, in Fowler, Indiana, this 3d day of June, A. D. 1880.

ROBERT WOOD,
CYRUS FOLTZ,
Board of Canvassers.

Attest: JAMES S. BRADLEY,
Auditor and Ex-officio Clerk of said Board.

Recorded June 3, 1880.

JAMES S. BRADLEY,
Auditor B. Co.

1779 Commissioners' Court, June term, 1880, sixth day thereof, the same being Saturday, June 12, 1880.

Whereas the Indiana and Chicago Railway Company, having filed the profile and map with the clerk of the circuit court of Benton county, showing that said railroad company have permanently located their line of road through Union and Oak Grove townships, in Benton county, and have shown by evidence that such location was made by the directors of said company, and that *at* a special election — held in Union township on the 22d day of May, 1880, to determine by vote that a tax should be levied on the property of said Union township, and at such election a majority of the votes cast was in favor of a tax to aid in the construction of said road through said township, it is therefore ordered that a tax of one per cent. be levied upon the real and personal property of Union township, in Benton county, in the State of Indiana, to aid in the construction of the Indiana and Chicago railway through said Union township, to be appropriated as by law provided.

Whereas the Indiana and Chicago Railway Company, having filed the profile and map with the clerk of the circuit court of Benton county, showing that said railroad company have permanently located their line of road through Union and Oak Grove townships, in Benton county, Indiana, and have shown by evidence that such location was made by the board of directors of said company, and that a special election, held in Oak Grove township on the first day of June, 1880, to determine by vote that a tax should be levied on the property of said Oak Grove township, and at such election a majority of the votes cast was in favor of a tax to aid in the construction of said road through said township, it is therefore ordered that a tax of one per cent. be levied upon the real and personal property of Oak Grove township, in Benton county, Indiana, to aid in the construction of the Indiana and Chicago railway through said Oak Grove township, to be appropriated as by law provided.

Commissioners' Court, June Session, 1881, third day thereof, being the 18th day of June, 1881.

Whereas Union township and Oak Grove township, in Benton county, in the State of Indiana, have voted a tax to aid in the construction of the Indiana and Chicago railway through said townships; and whereas a levy of one per cent. was levied on each one hundred dollars valuation of real and personal property of said townships by this board at its regular June session, 1880, it is therefore ordered that a tax of one per cent. be levied upon the real and personal property of Union township, in Benton county, Indiana, for the year 1881, to aid in the construction of the Indiana and Chicago railway through said township of Union, to be appropriated as provided by law, and that a tax of one per cent. be levied upon the real and personal property of Oak Grove township, in Benton county, Indiana, for the year 1881, to aid in the construction of the Indiana and Chicago railway through said township of Oak Grove, to be appropriated as provided by law.

1780 Commissioners' Court, September Session, 1881, second day thereof, being Tuesday, September 6th, 1881.

In the Matter of the Collection of Railroad Tax in Union and Oak Grove townships.

Whereas the civil townships of Union and Oak Grove have voted a tax to aid the Indiana and Chicago Railway Company in the construction of its road through said townships; and whereas a tax of one per cent. on the real and personal property of said townships has been levied and placed on the tax duplicate for the year 1880; and whereas the treasurer and auditor suspended collection of said tax under the provisions of an act of the Legislature entitled "An act supplemental to an act to authorize aid to the construction of railroads," &c., approved January 30, 1873; and whereas the Indiana and Great Southern Railway Company, which is the legal successor of the said Indiana and Chicago Railway Company, have shown to the satisfaction of this board that they have expended in said townships, in the construction of said railroad, a sum equal to the amount to be donated to said company. It is therefore ordered by this board that the treasurer of Benton county, Indiana, be and he is hereby instructed to proceed to collect said railroad tax the same as if it had never been suspended. And it is further ordered that the said treasurer give one week's notice to the tax-payers in said townships that the railroad tax for the year 1880 is now due and ordered to be collected at once; that said notice be given in the Oxford Tribune, and one of the papers in the town of Fowler.

Commissioners' Court, March Session, 1882, fourth day thereof, being Thursday, the 9th day of March, 1882.

Whereas, on the 22d day of May, 1880, Union township voted upon the question of said township aiding the Indiana and Chicago Railway Company in the construction of its railway through said township, in the sum of nine thousand dollars, upon a petition theretofore presented to this court for that purpose, and upon the terms and conditions in said petition mentioned, as — by reference to said petition, duly set out in the records of this court, in record-book No. 7, at page 180; and it also appears, by reference to said record-book No. 7, on page one hundred and ninety-one, that said Union township voted to grant and make such aid as will by said last-mentioned reference more fully appear. The canvass and result of said vote being therein recorded, and by reference to the records of this court, in record-book No. 7, on page 228, this court did levy upon the taxable property of said Union township, at the June term, 1880, one per cent. for the purpose of making and giving the aid heretofore petitioned for and voted to be so granted as aforesaid, and an additional one per cent. was levied at the June term, 1881, of this court, as will more fully appear by reference to the records of this court, as set out in record-book 7, on page 486; and whereas, it appears from the evidence submitted to us at this time that said Indiana and Chicago Railway Company has heretofore, to wit, on the 3rd day of May, 1881, by resolution of its board of directors, changed its name to that of the Chicago and Great
1781 Southern Railway Company, a copy of which change of name is recorded in the office of the recorder of Benton county, Indiana, in miscellaneous record-book No. 2, at page 442; and it also appears that by reference to said petition heretofore referred to the first levy of said tax is now due, and it also appears from the report of the treasurer of Benton county, Indiana, that there is now in his hands as such treasurer the sum of twenty-nine hundred and fifty dollars, which has been up to this time paid in upon the aforesaid first levy, the balance of said tax under that levy being delinquent: It is therefore ordered that this board of commissioners do, at this time, subscribe for fifty-nine (59) shares of the capital stock of the Chicago and Great Southern Railway Company for said township, to be by the trustees thereof held and controlled for the use and benefit of said Union township, and the auditor of this county is hereby directed, empowered, and required to draw his order upon the treasurer of this county in favor of William Foster, the president of said railway company, for the sum of twenty-nine hundred and fifty dollars, in payment of said stock now at this time subscribed for, as above set out, and to take a certificate from said William Foster, in the name of Union civil township, showing that said township is entitled to fifty-nine shares of the capital stock of said railway company.

Whereas on the first day of June, 1881, Oak Grove township voted upon the question of said township aiding the Indiana and Chicago Railway Company in the construction of its railway through said

township in the sum of fifteen thousand ($15,000) dollars, upon a petition theretofore presented to this court for that purpose, and upon the terms and conditions in said petition mentioned, as — by reference to said petition duly set out in the records of this court, in record-book No. 7, on page 186; and it also appears by reference to said record-book No. 7, on page 195, that said Oak Grove township voted to grant and make such aid as will by said last reference more fully appear, the canvass and result of said vote being therein recorded, and by reference to the records of this court, record-book No. 7, on page 228, this court did levy upon the taxable property of Oak Grove township, at the June term, 1880, one per cent. for the purpose of making and giving the aid heretofore petitioned for and voted to be so granted as aforesaid, and an additional one per cent. was levied at the June term, 1881, of this court, as will more fully appear by reference to the records of this court, book 7, page 486; and whereas it appears from the evidence submitted to us at this time that the Indiana and Chicago Railway Company has heretofore, to wit, on the 3d day of May, 1881, by resolution of its board of directors, changed its name to that of the Chicago and Great Southern Railway Company, a copy of which change of name is recorded in the office of the recorder of Benton county, Indiana, in miscellaneous record No. 2, on page 442; and it also appears that by the terms of said petition the first levy of said tax above referred to is now due; and it also appears from the report of the treasurer of Benton county, Indiana, that there is now in his hands as such treasurer the sum of six thousand one hundred and fifty ($6,150) dollars,
which has been up to this time paid in upon the levy of the one
1782 per cent. made at the June term, 1880, the balance of said
tax under that levy being delinquent: It is therefore ordered that the board of commissioners do at this time subscribe for one hundred and twenty-three (123) shares of the capital stock of the Chicago and Great Southern Railway Company for said township, to be by the trustee thereof held and controlled for the use and benefit of said Oak Grove township, and the auditor of this county is hereby directed, empowered, and required to draw his order on the treasurer of Benton county, Indiana, in favor of William Foster, the president of said railway company, for the sum of six thousand one hundred and fifty ($6,150) dollars in payment of said stock now at this time subscribed for, as above set forth, and to take a certificate from said William Foster, in the name of Oak Grove civil township, showing that said Oak Grove township is entitled to one hundred and twenty-three (123) shares of the capital stock of said railway company.

Commissioner's Court, April Session, 1882, first day thereof, being Friday, April 14, 1882.

Comes now William Moore, treasurer of Benton county, Indiana, and reports to this court that he has now in his hands as such treasurer the sum of twelve hundred and three $\frac{53}{100}$ dollars, collected upon the tax voted to aid in the construction of the Indiana and Chicago Railway Company's road, and now, by change of name, the Chicago and Great Southern railway, in Union township, Benton county, Indiana, and the sum of six hundred and thirty-nine and $\frac{24}{100}$ dollars, collection from the first installment of taxes voted by Oak Grove township to aid in the construction of said railway in and through said township. It is therefore ordered that the board of commissioners do at this time subscribe for twenty-four shares of the capital stock of said Chicago and Great Southern Railway Company for said Union township, to be by the trustee thereof held and controlled for the use and benefit of said Union township; and do likewise at this time subscribe for twelve shares of the capital stock of said Chicago and Great Southern Railway Company for said Oak Grove township, to be by the trustee thereof held and controlled for the use and benefit of said Oak Grove township; and the auditor of this county is hereby directed, empowered, and required to draw his order upon the treasurer of this county in favor of said Chicago and Great Southern railway for the sum of twelve hundred dollars in payment of said stock now at this time subscribed for Union township, as above set out, and to deliver the same to Henry Crawford, Jr., treasurer, or to T. C. Annabel, attorney for said railway company, and to take from them, or either of them, a certificate in the name of Union civil township, showing that said township is entitled to twenty-four shares of the capital stock of said railway company; and likewise said auditor is directed, empowered, and required to draw upon the treasurer of this county, in favor of said Chicago and Great Southern Railway Company, for the sum of six hundred dollars in payment of the stock now at this time subscribed for said Oak Grove township, as above set out, 1783 and deliver the same to Henry Crawford, Jr., treasurer, or T. C. Annabel, attorney for said railway company, and to take a certificate from them, or either of them, in the name of Oak Grove civil township, showing that said township is entitled to twelve shares of the capital stock of said railway company.

Commissioners' Court, June Term, 1882, third day thereof, being Wednesday, June 7th, 1882.

Whereas it appears from the treasurer's May settlement sheet in 1882 that there is now collected and due the Chicago and Great Southern Railway Company seven hundred and fifty dollars of the tax voted in aid of said company (which at the time of said voting was known as the Indiana and Chicago Railway Company) by Oak Grove township, in Benton county, Indiana, which said amount is in full for the first half of the appropriation voted said railway company, and also the sum of eleven hundred and fifty dollars of the sum voted said railway company by Union township, in said county and State, it is therefore ordered that the board of commissioners do at this time subscribe for fifteen shares of the capital stock of said Chicago and Great Southern Railway Company for said Oak Grove township, and also do now subscribe for twenty-three shares of the capital stock of said Chicago and Great Southern Railway Company for said Union township, to be held and controlled by the trustees of said townships for the use and benefit of their respective townships and the county auditor is hereby directed to issue his warrant upon the county treasurer in favor of said Chicago and Great Southern Railway Company for the sum of seven hundred and fifty dollars in payment of stock taken in said company at this time for Oak Grove township, and also draw his warrant on said treasurer for eleven hundred and fifty dollars in payment of stock this day taken in said company for Union township, and deliver the said warrants to Henry Crawford, Jr., treasurer of said railway company, and take from him a certificate in the name of said civil townships, showing that they are respectively entitled to fifteen and twenty-three shares of stock in said railway company.

In the Matter of Petition of JOHN CAMPBELL *et al.* for Railroad Tax in Oak Grove. No. 3170.

Come now the petitioners, by —— Annabel, and present their petition for a levy of said railroad tax in Oak Grove township, to make up the amount voted by said township to aid the Indiana and Chicago Railway Company as follows, to wit (insert). And the board, after being duly advised in the premises, hereby order that there be, and hereby is, levied a tax of nine cents on each one hundred dollars valuation of the taxable property of said Oak Grove township to aid the Chicago and Great Southern Railway Company in the construction of its road through said township, being the amount necessary to raise the amount voted by said township to aid said railway under the name and style of the Indiana and Chicago Railway Company, its name having been changed as above, and the auditor is hereby ordered to place the said tax on the duplicate of said township for the year 1882 for collection.

1784 In the Matter of Petition of JOHN KAAR for Railroad Tax in Union Township. No. 3171.

Comes now John Kaar, by —— Annabel, and presents his petition for a levy of railroad tax in Union township to make up the amount voted by said township to aid the Indiana and Chicago Railway Company as follows, to wit (insert). And the board, after being duly advised in the premises, hereby order that there be, and hereby is, levied a tax of twenty-six cents on each one hundred dollars valuation, of the taxable property of said Union township to aid the Chicago and Great Southern Railway Company in the construction of its road through said township, being the amount necessary to raise the amount voted by said township to aid said railway company under the name and style of the Indiana and Chicago Railway Company, its name having been changed as above, and the auditor is hereby ordered to place the said tax on the duplicate of said township for the year 1882 for collection.

Commissioners' Court, December Session, 1882, second day thereof, being Tuesday, December 5, 1882.

Comes now the auditor and reports that there is two thousand thirty-one and $\frac{11}{100}$ dollars paid in on the railroad tax in Union township on the aid voted in said township for the Chicago and Great Southern Railway Company, formerly the Indiana and Chicago Railroad Company: Now, therefore, this board of commissioners do now subscribe for forty shares of the capital stock of the said railway company for and on behalf of the said Union civil township, and the auditor is directed to draw his warrant on the treasurer for the sum of two thousand (2,000) dollars in favor of said railway company in payment of said stock so subscribed for, and to take from said railway company a certificate, under the seal of the said railway company, signed by its president and attested by its secretary, showing that said Union civil township is entitled to said forty shares of stock of said railway company.

Commissioners' Court, March Term 1883, first day thereof, being Monday, March 5, 1883.

Comes now T. C. Annabel, attorney for the Chicago and Great Southern Railway Company, and shows that said railway company is entitled to all the money voted by Union township in aid of said railway, and it not appearing whether all of said tax is collected, the board now subscribe for thirty-two shares of the capital stock of said railroad for Union civil township, and the auditor is ordered to draw his warrant on the treasurer of Benton county in payment therefor, and the treasurer is ordered to pay said warrant from said tax collected at this time, and any amount uncollected the treasurer is directed to pay said warrant from any funds of the county unappropriated, to be paid back to such fund of the county out of the tax when collected from said Union township.

June Session, 1883, fourth day thereof, being Thursday, June 7, 1883.

In the Matter of Taking Stock in Chicago and Great Southern Railroad Company, for Union Township.

1785 Comes now T. C. Annabel and shows to the board that there is collected and due said railroad company, on account of tax voted by said township in aid for the construction of said railroad through said township, the sum of eighty dollars in full of the entire amount of aid voted by said township, to wit, nine thousand dollars, after deducting twenty dollars for expenses of notice of election in said township, and the board now order that one and three-fifth shares of the capital stock of said railroad company be taken for said Union civil township; and that the county auditor draw his order on the county treasurer for the sum of eighty dollars in payment of said stock, and order further that the railroad tax hereafter collected in said township on account of the aid so voted be charged to the general county funds.

December Session, 1883, sixth day thereof, being Saturday, December 8, 1883.

In the Matter of Taking Stock in the Chicago and Great Southern Railroad Company.

Comes now the auditor of Benton county, Indiana, and shows to the court that there has been collected and is now on hand in the county treasury the sum of six thousand nine hundred seventy and $\frac{6}{100}$ dollars of the tax voted by Oak Grove township of said county in aid of the construction of the Chicago and Great Southern railroad through said township; and the board now order that the county auditor be, and he is hereby, authorized and instructed to take 139 shares of the capital stock of said Chicago and Great Southern Railroad Company for said Oak Grove civil township, and draw his warrant on the county treasurer for the sum of six thousand nine hundred fifty dollars ($6,950) in payment of said 139 shares of said capital stock: Provided, however, That the stock shall not be taken, nor the warrant be drawn until said company make satisfactory proof to said auditor of the completion of said railroad in accordance with the contract under which said aid was voted.

Issued February 1st, 1884.

December Session, 1884, sixth day thereof, being Saturday, December 6, 1884.

Whereas the treasurer of Benton county comes now and reports to the court that he has in his hands the sum of one hundred and thirty-five $\frac{12}{100}$ dollars, collected of the railway aid to the Chicago and Great Southern Railway Company, and the board now subscribes for two shares of fifty dollars each of the capital stock of the Chicago and Great Southern Railway Company, for and in the name of Oak Grove civil township, and the auditor is directed to draw his order on the treasurer for the said Benton county, for the sum of one hundred dollars, in payment of said stock, when said railway shall by its attorney, T. C. Annabel, present said stock certificate, properly signed, under the seal of said company, in favor of Oak Grove civil township.

Issued January 3, 1885, for $100.

STATE OF INDIANA, } ss:
Benton County, }

1786 I, James A. McKnight, auditor within and for said county and State, do hereby certify that the above and foregoing transcript contains true copies of all the proceedings and orders of the board of commissioners of said county and State, made and entered of record in the order-books of said commissioners' court relating to the petitions, elections, returns of elections, levying of taxes, [and] reports of the auditor and treasurer of collection of taxes, in relation to the aid voted in Oak Grove and Union townships, in said county and State, in the construction of the Indiana and Chicago Railway Company and afterwards changed to the Chicago and

Great Southern Railway Company, the payments to said railway company of taxes collected, and the subscriptions in the name of said townships for the capital stock of said company, as appears of record now on file in my office; and I further certify that I am the custodian and keeper of the seal and records of said commissioners' court.

In witness whereof I hereunto set my hand and affix the seal of said board of commissioners, at my office, in Fowler, Indiana, this 18th day of November, A. D. 1885.

[SEAL.] JAMES A. McKNIGHT,
Auditor, Benton County, Indiana.

Proceedings of County Commissioners' Court of Newton County Relative to Aid Voted by Grant and Iroquois Townships.

EXHIBIT L. John Gray, special commissioner.

STATE OF INDIANA, } *ss:*
Newton County, }

Commissioners' Court.

In the matter of the petitions of sundry citizens of Grant and Iroquois townships, Newton county, Indiana, for an appropriation by said township- to aid in the construction of the Indiana and Chicago railway.

Be it remembered that on the 12th day of April, 1880, the board of commissioners of said county then being in special session at the court-house in Kentland, in said county—present, Silas Sink, Thaddeus S. Brecount, and John D. Spohr, commissioners—the following proceedings were had in said matter, to wit:

Comes now T. C. Annabal and presents the following petition of sundry persons, to wit:

To the honorable the board of county commissioners of Newton county, in the State of Indiana:

We, the undersigned, freeholders of Grant township, Newton county, in the State of Indiana, would most respectfully petition your honorable board and show that the Indiana and Chicago Railway Company, a corporation legally formed under and pursuant to the laws of the State of Indiana for the purpose of constructing a railroad from a point on the State line of Indiana and Illinois from or near the northwest corner of the northwest quarter of section number thirty-six in township numbered thirty-eight north, of range ten west, in Lake county, in the State of Indiana, to the city of Attica, in the county of Fountain, in the State of Indiana, passing in and through said Grant township, in Newton county, Indiana, the construction of which railroad will be of great value and benefit
1787 to said Grant township aforesaid. We, the freeholders of Grant township aforesaid, respectfully petition your honorable board that Grant township, of Newton county and State of Indiana, as aforesaid, make an appropriation of fifteen thousand six hundred dollars to aid in the construction of said Indiana and Chicago Railway Company's road in and through said township, not, how-

ever, exceeding two per centum of the taxable property of said township, as shown by the tax duplicate of said township for the previous year, one-half of the appropriation to be paid when said railroad shall be completed and trains pass over the same from the town of Goodland, in said township, to the Lake Erie and Western railroad, in Benton county, Indiana, and one-half when said road shall be completed to such point north as will connect with a line of road to the city of Chicago, and for which we will forever pray.

Grant township, Newton county, Indiana, March 20, 1880.

1. William Foster.
2. S. C. Spoor.
3. George Hardy.
4. B. Wilson.
5. Ed. L. Hall.
6. Wm. T. Burges.
7. J. T. Gray.
8. Jno. W. Bear.
9. Charles F. Streight.
10. Christian Fehrle.
11. N. C. Wickwire.
12. John Wilson.
13. C. W. Hartley.
14. Thomas Linfoot.
15. R. H. Putt.
16. Geo. Linfott.
17. John Monagle.
18. W. Shively.
19. Frank R. Orvis.
20. H. Patton.
21. Z. F. Little.
22. Wm. Mills.
23. George Garland.
24. W. A. Hopkins.
25. H. H. Green.
26. A. M. Culver.
27. William W. Gilman.
28. George Turner.
29. George Galbraith.
30. Wm. Bell.
31. James H. Kenyon.
32. Archibald Burns.

Which said petition is taken under advisement, and the board of commissioners, being satisfied that said railroad company is duly organized under the laws of the State of Indiana, and that said petition has been properly signed by the requisite number, to wit, more than twenty-five freeholders of Grant township, Newton county, Indiana, do make the following order, viz:

Order No. One.

It is hereby ordered that an election be held in Grant township, Newton county, Indiana, at the usual and regular place for holding elections, on the 22d day of May, A. D. 1880, for the purpose of voting upon the proposition of Grant township aiding the Indiana and Chicago Railway Company in the construction of its road through said township, by said township making an appropriation to said railway company in the sum of fifteen thousand six hundred dollars as is asked by said petition filed with this court, and the auditor shall immediately give notice, to be published for at least four weeks successively in the Goodland Herald, a newspaper of general circulation in the county, and also by printed handbills to be posted in ten public places in the township of Grant aforesaid, which publication and handbills shall give notice of the
1788 conditions on which said appropriation shall become payable as
asked for in said petition, and the sheriff of the county shall post the handbills three weeks prior to the day fixed for taking the vote of the township of Grant aforesaid as is provided by statute in such cases.

And also now comes T. C. Annabal and presents the following petition of sundry persons, to wit:

To the honorable board of county commissioners of Newton county, in the State of Indiana:

We, the undersigned, freeholders of Iroquois township, Newton county, in the State of Indiana, would most respectfully petition your honorable board and show that the Indiana and Chicago Railway Company, a corporation legally formed under and pursuant to the laws of the State of Indiana, for the purpose of constructing a railroad from a point on the State line of Indiana and Illinois from or near the northwest corner of the southwest quarter of section number thirty-six, in township number thirty-eight north, of range ten west, in Lake county, in the State of Indiana, to the city of Attica, in the county of Fountain, in the State of Indiana, passing in and through said Iroquois township, in Newton county, Indiana, the construction of which railroad will be of great value and benefit to said Iroquois township aforesaid.

We, the freeholders of Iroquois township aforesaid, respectfully petition your honorable board that Iroquois township, of Newton county, and State of Indiana, as aforesaid, make an appropriation of ten thousand seven hundred and fifty dollars to aid in the construction of said Indiana and Chicago Railway Company's road in and through said township, not, however, exceeding two per centum of the taxable property of said township, as shown by the tax duplicate of said township for the previous year, and for which we will forever pray; one-half of the appropriation to be paid when said railroad shall be completed and a train of cars can pass over the same from Iroquois river to the town of Goodland, in said county, and the other half when a train of cars pass from the town of Goodland aforesaid north through said county and connect in Lake county with a road to the city of Chicago. It is understood and agreed that one station on said road shall be located and maintained in said township of Iroquois, on each side of the Iroquois river.

Iroquois Township, Newton Co., Ind., March 23, 1880.

1. John B. Forseman.
2. John W. Sapp.
3. Andrew Hess.
4. John B. Lyons.
5. Geo. B. Smith.
6. David E. Lowe.
7. A. J. Montgomery.
8. Charles Walling.
9. Laban Lyons.
10. David Hess.
11. E. Crudden.
12. Paul Weishaar.
13. Henry I. Griggs.
14. John Z. Johnston.
15. Samuel Wilson.
16. J. V. Hess.

Aaron Lyons.
James O. Laughlin.
James Duffy.
James F. Conn.
W. W. Cline.
William Clark.
Harrison Tyler.
James Shaffer.
John H. Merchant.
Edward Hess.
Sherman Hess.
C. W. Hopkins.
Nicholas Beecher.

1789 Which said petition is taken under advisement, and the board of commissioners, being satisfied that said railway company is duly organized under and pursuant to the laws of the State of Indiana, and that said petition has been properly signed by the requisite number, to wit, more than twenty-five freeholders of Iroquois township, Newton county, Indiana, do make the following order, viz.:

Order No. Two.

It is ordered that an election be held in Iroquois township, Newton county, Indiana, at the usual and regular place of holding elections, on the 22d day of May, A. D. 1880, for the purpose of voting upon the proposition of Iroquois township aiding the Indiana and Chicago Railway Company in the construction of its road through said township by said township making an appropriation to said railway company in the sum of ten thousand seven hundred and fifty dollars, as is asked for by a petition filed with this court. And the auditor shall immediately give notice, to be published for at least four weeks successively in the Goodland Herald, a newspaper of general circulation in the county, and also by printed handbills, to be posted in ten public place in the township of Iroquois aforesaid, which said notice of election and handbills shall also state the terms and conditions of said proposed appropriation, as is set forth in said petition, and the sheriff of the county shall post said handbills three weeks prior to the day fixed for taking the vote of the township of Iroquois aforesaid, as is provided by the statute in such cases.

Auditor's Certificate. Vacation Entry.

STATE OF INDIANA, } *ss:*
Newton County, }

I, Alexander Sharp, auditor of Newton county, Indiana, do hereby certify that the auditor of said county caused notice to be given of the time and place of the holding of an election in Grant township, in said county and State, for the purpose taking the votes of the legal voters of said township upon the subject of said township appropriating the sum of fifteen thousand six hundred dollars to aid in the construction of the Indiana and Chicago railway through the township aforesaid, for four weeks successively prior to the 22d day of May, 1880, in the Goodland Saturday Herald, a newspaper of general circulation in said township and county, and published in said county. The first publication was made on the 17th day of April, the second on the 24th day of April, and the third on the 1st day of May, and the fourth on the 8th day of May, and the fifth on the 15th day of May, 1880. A copy of said notice is attached hereto and made a part of this certificate, marked Exhibit "A."

In witness whereof I have hereunto set my hand and affixed my official seal as auditor of said county this 27th day of May, 1880.

[SEAL.]

A. SHARP,
Auditor Newton County.

1790 **EXHIBIT "A."**

Railroad Election.

To the qualified voters of Grant township, Newton county, Indiana:

Pursuant to an order of the board of commissioners of Newton county, Indiana, notice is hereby given that the voting-places in the precincts in said Grant township will be open on Saturday, May 22, A. D. 1880, for the purpose of taking the votes of the legal voters of said Grant township for or against the appropriation of fifteen thousand six hundred dollars, said appropriation of fifteen thousand six hundred dollars to be levied and collected by taxation on and from Grant township, on the taxable property thereof, to be used in aid for the construction of the Indiana and Chicago Railway Company's railroad through said Grant township, upon such terms and conditions as the statute directs, in the discretion of the board of commissioners, under the statute provided in such cases. The petition filed in this matter contains the following conditions and terms, viz: "One-half of the appropriation to be paid when said railroad shall be completed and trains pass over the same from the town of Goodland to the Lake Erie and Western railroad, in Benton county, Indiana, and one-half when said road shall be completed to such a point north as will connect with a line of road to the city of Chicago." That said appropriation of money be paid to said railway company or its assignees for the purpose aforesaid, subject to the provisions and limitations of existing laws. Said appropriation is for the construction of the aforesaid railway through Grant township. And the ballots shall read: "For the railroad appropriation," or "Against the railroad appropriation."

April 13, 1880.

JOHN Z. JOHNSTON,
Auditor of Newton County, Indiana.

Vacation Entry. Auditor's Certificate.

STATE OF INDIANA, } *ss:*
Newton County, }

I, Alexander Sharp, auditor of Newton county, Indiana, do hereby certify that the auditor of said county caused notice to be given of the time and place of holding an election in Iroquois township, in said county and State, for the purpose of taking the votes of the legal voters of the said township upon the subject of said township appropriating the sum of ten thousand seven hundred and fifty dollars to aid in the construction of the Indiana and Chicago railway through the township aforesaid, for four weeks successively prior to the 22d day of May, 1880, in the Goodland Saturday Herald, a newspaper published, and of general circulation in said county, which publication was made on the 17th and 24th days of April, and the 1st, 8th, and 15th days of May, A. D. 1880, a copy of which notice is attached hereto and made a part of this certificate, marked Exhibit "A."

In witness whereof I have hereunto set my hand and affixed my official seal as auditor this 27th day of May, A. D. 1880.

[SEAL.] A. SHARP,
Auditor Newtcn County.

1791 EXHIBIT "A."

Railroad Election.

To the qualified voters of Iroquois township, Newton county, Indiana:

Pursuant to an order of the board of commissioners of Newton county, Indiana, notice is hereby given that the voting places in the precincts of Iroquois township will be open on Saturday, May 22, 1880, for the purpose of taking the votes of the legal voters of said Iroquois township for or against the appropriation of ten thousand seven hundred and fifty dollars, said appropriation of ten thousand seven hundred and fifty dollars to be levied and collected by taxation on and from Iroquois township on the taxable property thereof, to be used in aid *for* the construction of the Indiana and Chicago Railway Company's railroad through said Iroquois township, upon such terms and conditions as the statute directs, in the discretion of the board of commissioners under the statute provided in such cases. The petition in this matter contains the following terms and conditions, viz: "One-half the appropriation to be paid when said road shall be completed and a train of cars can pass over the same from the Iroquois river to the town of Goodland, in said county, and the other half when a train of cars pass from the town of Goodland aforesaid north through said county and connect in Lake county with a road to the city of Chicago. It is understood and agreed that one station on said road shall be located and maintained in said township of Iroquois on each side of the Iroquois river." That said appropriation of money be paid to said railway company or its assignees for the purpose aforesaid, subject to the provisions and limitations of existing laws. Said appropriation is for the construction of the aforesaid railway through Iroquois township. And the ballots shall read: "For the railroad appropriation" or "Against the railroad appropriation."

April 13, 1880.

JOHN Z. JOHNSTON,
Auditor of Newton County.

Vacation Entry. Sheriff's Certificate.

"Copy of sheriff's certificate."

STATE OF INDIANA, } *ss:*
Newton County, }

I, Hugh Parker, sheriff of Newton county, Indiana, do hereby certify that I did on the 17th day of April, 1880, post the annexed handbill giving notice of an election to be held in Grant township, Newton county, Indiana, upon the subject of voting aid to the In-

diana and Chicago railway, in ten several public places in Grant township, Newton county, Indiana, on the 17th day of April,
1792 1880, which was more than three weeks prior to May 22, 1880, and in all respects as provided by statute in such cases.

Kentland, Ind., May 27, 1880.

HUGH PARKER,
Sheriff, Newton County.

(To which certificate is annexed a printed notice identical with the one set out in this record commencing on page 9, at line 8, and ending on page 10, at line 20.)

Vacation Entry. Sheriff's Certificate.

STATE OF INDIANA, } ss:
Newton County, }

I, Hugh Parker, sheriff of Newton county, Indiana, do hereby certify that I did on the 17th day of April, 1880, post the annexed handbill, giving notice of an election to be held in Iroquois township, Newton county, Indiana, upon the subject of voting aid to the Indiana and Chicago railway, in ten several public places in Iroquois township, Newton county, Indiana, on the 17th day of April, 1880, which was more than three weeks prior to May 22, 1880, and in all respects as provided by statute in such cases.

Kentland, Ind., May 27, 1880.

HUGH PARKER,
Sheriff of Newton County.

(To which sheriff's certificate is attached a printed notice identical with the one set out in this record commencing on line 19 of page 11 and ending with line 29 on page 12.)

Affidavit of Publication Attached to Record.

STATE OF INDIANA, } ss:
Newton County, }

Personally appeared before the undersigned ——, publisher of Goodland Herald, a public weekly newspaper of general circulation, printed and published in Goodland, in the county aforesaid, who, being duly sworn, upon his oath saith that the notice, of which the attached is a true copy, was duly published in said paper for three weeks successively, the first of which publication was on the 17th day of April, 1880, and the last on the 15th day of May, 1880.

A. J. KITT.

Subscribed and sworn to before me this 27th day of May, 1880.

JNO. G. DAVIS, *Clerk.*

(To which is attached copy of notice identical with that set out in this record, commencing with line 8 on page 9 and ending with line 20 of page 10.)

Affidavit of Publication Attached to Record.

STATE OF INDIANA, }
Newton County, } *ss:*

Personally appeared before the undersigned ——, publisher of Goodland Saturday Herald, a public weekly newspaper of general circulation, printed and published in Goodland, in the county aforesaid, who, being duly sworn, upon his oath saith that the notice, of which
the attached is a true copy, was duly published in said paper
1793 for three weeks successively, the first of which publications
was on the 17th day of April, 1880, and the last on the 15th
day of May, 1880.

A. J. KITT.

Subscribed and sworn to before me this 27th day of May, 1880.

JNO. G. DAVIS, *Clerk.*

(To which is attached a copy of notice identical with that set out in this record, commencing with line 19 of page 11 and ending with line 29 on page 12.)

Vacation Entry.

AUDITOR'S OFFICE,
KENTLAND, NEWTON COUNTY, INDIANA, *May* 27, 1880.

In pursuance of an order of the board of commissioners of Newton county, Indiana, at their special session on the 12th day of April, 1880, — did order an election to be held in Grant township on the 22d day of May, 1880, to vote aid to the Indiana and Chicago Railway Company to the amount of fifteen thousand six hundred dollars, in Grant township, publication and notice of such election having been duly given.

Now come A. T. McCurry, inspector, — Wm. W. Gilman, one of the judges of said election, with the poll-books and tally-sheets, etc., of said election, held in Grant township on said 22d day of May, 1880, for the purpose of taking the votes of the qualified voters of said township upon the subject of said township aiding the Indiana and Chicago Railway Company in the sum of fifteen thousand six hundred dollars in building its road through said township, and, together with the auditor, organized a board of canvassers, and A. T. McCurry is chosen president of the board, and Alexander Sharp is chosen clerk thereof. Said board having examined the papers, the poll-books, tally-sheets, and certificates thereto attached, and the tickets cast at such election, do hereby certify that there was two hundred and seven votes cast at said election; that there was one hundred and eighty-four votes cast for the railroad appropriation, and twenty votes cast against the railroad appropriation, and three votes that was neither for or against the appropriation;

In witness whereof we have hereunto subscribed our names and affixed our seals this 27th day of May, 1880.

A. T. McCURRY, *Pres't*, [SEAL.]
A. SHARP, *Clerk*, [SEAL.]
WM. W. GILMAN, [SEAL.]
Board of Canvassers.

Recorded May 27, 1880.

A. SHARP, *Auditor*.

Vacation Entry.

AUDITOR'S OFFICE,
KENTLAND, NEWTON COUNTY, IND., *May* 27, 1880.

In pursuance of an order of the board of commissioners of 1794 Newton county, Indiana, at their special session on the 12th day of April, 1880, — did order an election to be held in Iroquois township on the 22d day of May, 1880, to vote the Indiana and Chicago Railway Company to the amount of ten thousand seven hundred and fifty dollars, and publication and notice of said election having been duly given, now comes John Hershman, inspector of said election, and Bernhard Paulus, one of the judges of said election held in Iroquois township on the 22nd day of May, 1880, for the purpose of taking the votes of the qualified voters of said township upon the subject of said township aiding the Indiana and Chicago Railway Company, in the sum of ten thousand seven hundred and fifty dollars, in building its road through said township, and, together with auditor, organized a board of canvassers, and John Hershman is chosen president of the board and Alexander Sharp is chosen clerk thereof. Said board, having examined the papers, the poll-books, tally-sheets, and certificates thereto attached, and the tickets cast at such election, do hereby certify that there was one hundred and forty-six votes cast at said election; that there was one hundred votes cast for the railroad appropriation and forty-six votes cast against the railroad appropriation.

In witness whereof we have hereunto signed our names and affixed our seals this 27th day of May, 1880.

JOHN R. HERSHMAN, *President.* [SEAL.]
A. SHARP, *Clerk.* [SEAL.]
BERNHARD PAULUS, *Board of Canvassers.*

Recorded May 27, 1880.

A. SHARP,
Auditor, N. C.

And be it remembered that on the 10th day of June, 1880, being the 4th judicial day of the June term, 1880, of the commissioners' court of Newton county, Indiana, held at the auditor's office in the court-house in Kentland, in said county, before the Honorable Silas Sink, John D. Spohr, and Thaddeus S. Brecount, the board of commissioners of said county, the following proceedings were had in said matter, to wit:

STATE OF INDIANA, } *ss:*
Newton County, }

In Commissioners' Court. June Term, 1880.

Comes William Foster, of said county, a tax-payer of Grant township, and Andrew Hess, a tax-payer of Iroquois township, and respectfully ask that a tax of one per cent. be levied upon the property of Grant township and Iroquois township, Newton county, to aid in the construction of the Indiana and Chicago Railway Company through said townships aforesaid.

Kentland, Indiana, June 10, 1880.

WILLIAM FOSTER.
ANDREW HESS.

William Foster upon his oath says that he is one of the directors of the Indiana and Chicago Railway Company, and, with four others of said board of directors, being a majority, *and* locate their line of road through the said townships of Grant and Iroquois, as shown by the plat or profile in the clerk's office in Newton county.

WILLIAM FOSTER.

1795 Sworn to and subscribed before me this 10th day of June, 1880.

A. SHARP,
Auditor Newton County.

Now comes William Foster and asks that a tax of one per cent. be, and [it] is hereby, levied upon the property, real and personal, of Grant township, and also one per cent. upon the real and personal — of Iroquois township, Newton county, to aid the said Indiana and Chicago railway to construct their line of road through said townships of Grant and Iroquois, as provided by law.

Concurred in.

SILAS SINK,
J. D. SPOHR,
T. S. BRECOUNT.

And be it remembered that on the 9th day of June 1881, being the fourth judicial day of the June term, 1881, of the commissioners' court of Newton county, Indiana, held at the auditor's office, in Kentland, in said county, before the Honorable Thaddeus S. Brecount, John D. Spohr, and Joseph W. Chizum, the board of commissioners of said county, the following proceedings were had in said matter, to wit:

Comes now William Foster and asks the court to levy, at this June term, 1881, the additional one per cent. voted by Grant and Iroquois townships to aid in the construction of the Indiana and Chicago railway, in the construction of its road through said townships, as was voted by said townships, respectively, on the 22d day of May, 1880, one per cent. having been levied heretofore, to wit, at their June session of this board, 1880.

WM. FOSTER.

Which said motion is taken under advisement, and the court having examined the same and its record on that subject, do say and find such vote was made to aid said railroad, and that one per cent. was levied in each of said townships at the June term, 1880, and that is — one per cent. that ought to be levied at this June term, 1881, on the taxable property of each of said townships. It is therefore ordered that one per cent. be levied upon the taxable property, both real and personal, in the township of Grant, Newton county, Indiana, to aid in the construction of the Indiana and Chicago railway through said Grant township, and that the same be placed upon the duplicate for collection as provided by law in such cases; and also be it further ordered that a levy of one per cent. be levied upon the taxable property of Iroquois township, Newton county, Indiana both real and personal, to aid in the construction of the Indiana and Chicago railway through said township, and that the same be placed upon the duplicate for collection as the law in such cases provides.

And be it remembered that on the 10th day of June, 1881, being the fourth judicial day of said June term, 1881, of the commissioners' court of Newton county, held at the auditor's office in said county before the Hons. Thaddeus Brecount, John D. Spohr, and Joseph W. Chizum, the board of commissioners of said county, the following further proceedings were had in said matter:

1796 Ordered, That the tax levy of one per cent. on real and personal property in Grant and Iroquois townships, Newton county, Indiana, to aid in the construction of the Indiana and Chicago Railway Company be approved and tax ordered to be placed on the tax duplicate of 1881.

And be it remembered that, on January 3, 1882, at a special meeting of the commissioner's court, held at the auditor's office in Kentland, in said county, the following further proceedings were had in said matter, to wit:

KENTLAND, INDIANA, *January* 3, 1882.

The board of commissioners, after adjournment, met at the auditor's office same day and convened on their own motion.

Present: T. S. Brecount, John D. Spohr, and Joseph W. Chizum, commissioners; A. Sharp, auditor.

The object of said meeting was to meet and confer with William Foster, president of the Indiana and Chicago Railway Company, in regard to the collection of taxes voted in aid of said railway company by Grant and Iroquois townships, and, upon statement filed by William Foster, president of said railway company, *and* the progress of said road is such and — progressing so favorably, *that* it is hereby ordered that the treasurer of Newton county proceed immediately to collect the taxes voted in aid of said railway company by Grant township and placed upon the duplicate of 1880, and that the treasurer publish a notice to those tax-payers in Iroquois township that he is ready to receive the tax voted in Iroquois township in aid of said railway company.

(Signed) T. S. BRECOUNT.
J. D. SPOHR.
J. W. CHIZUM.

And be it remembered that on the 10th day of March, 1882, being the fifth judicial day of the March term, 1882, of the commissioners' court of Newton county, Indiana, held at the auditor's office, in Kentland, in said county, before the Honorable Thaddeus S. Brecount, John D. Spohr, and Joseph W. Chizum, the board of commissioners of said county, the following further proceedings were had in said matter, to wit:

Whereas, on the 22d day of May, 1880, Grant township voted upon the question of said township aiding the Indiana and Chicago Railway Company in the construction of its railway through said township in the sum of fifteen thousand and six hundred (15,600) dollars, upon a petition thereto presented to the court for that purpose and upon the terms and conditions in said — mentioned, as — by reference to said petition, duly set out and in the records of this court in record-book No. 5, on page 2; and it also appears by reference — said record-book No. 5, on page —, that said Grant township voted to grant and make such aid, as will more fully appear by said last-mentioned reference, the canvass and result of said vote being therein recorded, and by reference to the records of this court at its June term, 1880, in record-book No. 5, on page 35, — the court did levy upon the taxable property of Grant township aforesaid one per cent., for the purpose of making and giving the aid heretofore petitioned for and voted to be so granted as aforesaid; and whereas it appears, from the evidence submitted to us at this time,
1797 that the said Indiana and Chicago Railway Company has heretofore, to wit, by resolution of its board of directors, on the 14th day of July, 1881, changed its name to that of the Chicago and Great Southern Railway Company, which resolution is recorded in the recorder's office of Newton county, Indiana, in miscellaneous record No. 2, on page 478; and it also appears, from evidence submitted to us at this time that, by the terms and conditions of said petition, the tax first levied as aforesaid is now due and payable to said Chicago and Great Southern Railway Company; and it also appears, from the report of the treasurer of Newton county aforesaid that there is now collected and in his hands as such treasurer of said tax the sum of four thousand and eighty dollars and sixty-nine (4,080.69) cents, the balance of said tax so levied being delinquent:

It is therefore ordered that the board of county commissioners do now subscribe for eighty (80) shares of the capital stock of the Chicago and Great Southern Railway Company for the use and benefit and in the name of Grant civil township, to be by the trustee of said township held and controlled for the benefit of said township, and the auditor is hereby directed and ordered and required to draw his order upon the treasurer of Newton county aforesaid for the sum of four thousand (4,000) dollars to the order of William Foster, the president of the said railway company, in payment of the eighty shares so subscribed for, and to take from said Foster a certificate showing that said Grant civil township is entitled to said shares of stock at this time subscribed for.

And be it remembered that on the 13th day of April, 1882, the commissioners' court of New county, Indiana, then being in special session at the auditor's office, in Kentland, in said county, before the Honorable Thaddeus S. Brecount, John D. Spohr, and Joseph W. Chizum, the board of commissioners of said county, the following further proceedings were had in said matter, to wit:

On application of Henry Crawford in behalf of the Chicago and Great Southern Railway Company in regard to taxes collected in Grant township voted in aid of said railway company, which is subscribed as stock for said Grant township, it is therefore ordered that the treasurer, George G. Jenkins, shall pay to said railway company the amount that may be collected and on hand on the 3d Monday of April next on the warrent of the county auditor, who is hereby required to draw the same when said railway company shall deliver a proper executed certificate for all stock heretofore subscribed as made [as] well as for the amount for which a warrent may be drawn.

And be it remembered that on the 8th day of January, 1882, being the fourth judicial day of the June term, 1882, of the commissioners' court of Newton county, Indiana, held at the auditor's office, in Kentland, in said county, before the Hon. Thaddeus S. Brecount and Joseph W. Chizum, two of the three members of the board of commissioners of said county, the following further proceedings were had in said matter, to wit:

1798 Comes now the treasurer of Newton county and reports that he has on hand of the money collected from Grant township, in said county, to aid in the construction of the Indiana and Chicago railway, now the Chicago and Great Southern railway, through said township, to the amount of two hundred dollars, and the commissioners now subscribe for and on behalf of Grant civil township of said county for four shares of the capital stock of said railway company, and the auditor is hereby directed to draw his order of the treasurer of Newton county for the sum of two hundred dollars in payment of said stock, and the auditor is directed to take a certificate from said railway company, signed by H. Crawford, Jr., secretary, showing that said township is entitled to said stock.

And the following further proceedings were had before said court at the same time and place, to wit:

Comes now John W. Sapp, by T. C. Annabal, his attorney, and files his petition for an additional tax in Iroquois township, which reads as follows, to wit:

To the honorable board of commissioners of Newton county, Indiana:

The undersigned, a resident citizen and tax-payer of Iroquois township, of said county, would respectfully petition and show that the qualified voters of said township did, on the 22d day of May, 1880, vote upon the proposition of said township aiding the Indiana and Chicago Railway Company, now the Chicago and Great Southern Railway Company, in the sum of ten thousand seven hundred and fifty dollars in the construction of its road through said township, which proposition to grant such aid was carried by a large majority of the votes of said township: that at the June session 1880, of this honorable board, there was levied a tax of one per cent. upon the taxable property of said township for the purpose of giving such aid so voted, and that the fund produced thereby was three thousand seven hundred seventy-six and $\frac{56}{100}$ dollars, and at their June session, 1881, there was a further levy of one per cent. upon the taxable property of said township for a like purpose, producing a fund of three thousand eight hundred and sixty-three and $\frac{74}{100}$ dollars, making the total sum of seven thousand six hundred forty and $\frac{36}{100}$ dollars on both said levies, leaving a deficiency of three thousand one hundred nine and $\frac{64}{100}$ ($3,109.64) dollars, which out to be levied upon the taxable property of said township at this June session, 1882, of your honorable board that said township may make the aid voted and thereby keep her faith.

Whereof I respectfully ask your honorable board, at your June session, 1882, to levy a tax upon the taxable property of said Iroquois township sufficient to produce an amount equal to the deficiency aforesaid, and in accordance with the law governing such levy of taxes, and that the same be applied in aid of said railway in accordance with said vote, and that thereby said township may be enabled to make the aid so voted in full and forever; for which I will forever pray.

Iroquois township, Newton county, Indiana, May 29, 1882.

JOHN W. SAPP.

1799 The above petition examined and not allowed, and the board refuse to make the levy as prayed for in the foregoing petition.

And also the following further proceeding was had in said matter in said court at the same time and place:

Comes now S. H. Wilson, by T. C. Annabal, his attorney, and presents a petition for an additional tax in Grant township, which is in the words and figures following, to wit:

To the honorable board of commissioners of Newton county:

The undersigned, a resident, citizen, and tax-payer of Grant township, of said county, would respectfully petition and show that the qualified voters of said Grant township did, on the 22d day of May, 1880, vote upon the proposition of said township aiding the Indiana and Chicago Railway Company, now the Chicago and Great Southern Railway Company, in the sum of fifteen thousand six hundred dollars, in the construction of its road through said township, which proposition to grant such aid was carried by a large majority of the voters of said township; that at the June session, 1880, of their honorable board there was levied a tax of one per cent. upon the taxable property of said township for the purpose of giving such aid so voted, and that the fund produced thereby was five thousand nine hundred seventy-four and $\frac{49}{100}$ dollars, and that at the June session of your board, 1881, there was a further levy of one per cent. upon the taxable property of said township, producing the fund of six thousand ninety-six and $\frac{33}{100}$ dollars, making the total sum of twelve thousand seventy and $\frac{82}{100}$ dolllars on both said levies, leaving a deficiency [of] thirty-five hundred twenty-nine and $\frac{18}{100}$ dollars which ought to be levied upon the taxable property of said township at this June session, 1882, of your honorable board, that said township may make the aid voted, and thereby keep her faith. Wherefore I respectfully ask your honorable board, at your June session, 1882, to levy a tax upon the taxable property of said Grant township sufficient to produce a fund to an amount equal to the deficiency aforesaid, and in accordance with the law governing such levy of taxes, and that the same be applied in the aid of said railway in accordance with said vote, and that thereby said township may be enabled to make the aid so voted in full, and for which I will forever pray.

Grant township, Ind., June 7, 1882.

S. H. WILSON.

And the board, after examining the foregoing petition, refuse to make the levy as prayed for.

And be it remembered that on the 5th day of September, 1882, being the second judicial day of the September term, 1882, of the commissioners' court of Newton county, Indiana, held at the auditor's office in Kentland, in said county, before the Honorable Thaddeus S. Brecount, Joseph W. Chizum, and Ebenezer Hunter, the board of commissioners of said county, the following proceedings were had in said matter, to wit:

1800 In the Matter of the Chicago and Great Southern Railway Company.

Comes the said railway company, by T. C. Annabal, their attorney, and makes prayer that said company have constructed and finished their line of road from the town of Goodland to the south bank of the Iroquois river, in Iroquois township, Newton county, Indiana, and have run trains of cars on the same, and ask the commissioners of Newton county to subscribe for Iroquis township for thirty-one shares of the capital stock of said railway company, being part of the first instalment of the tax voted in aid of said railway.

And now comes George G. Jenkins, treasurer of Newton county, and reports that he has collected the sum of fifteen hundred and fifty dollars from tax-payers of Iroquois township of the first half of the tax voted in aid of said railroad; and the court, after being duly advised in the premises, do subscribe the sum of 1,550 dollars for thirty-one shares of stock for Iroquois civil township, and order and direct the auditor to draw his warrant upon the treasurer in favor of said Chicago and Great Southern Railway Company, and deliver the same to said railway company, and take from said company a duly-executed certificate for thirty-one shares of stock for said Iroquois civil township.

And now comes George G. Jenkins, treasurer of Newton county, and reports that he has in his hands, collected from Grant township for the Chicago and Great Southern Railway Company, — in the first half of said stock, and the board now subscribe for eight shares of the capital stock of said railway company, and the auditor is authorized to draw his warrant upon the treasurer of Newton county and deliver the same to said company, and take from said company its stock certificate for eight shares of its capital stock, duly signed by its president and secretary and under the corporate seal of the company.

And be it remembered that on the 5th day of December, 1882, being the second judicial day of the December term, 1882, of the commissioners' court of Newton county, Indiana, held at the auditor's office in Kentland, in said county, before the Honorable Thaddeus S. Brecount, Joseph W. Chizum, and Ebenezer Hunter, the board of commissioners of said county, the following further proceedings were had in said matter, to wit:

Comes now George G. Jenkins, treasurer of Newton county, Indiana, and reports that he has collected from Grant township eight hundred dollars in aid of the Indiana and Chicago Railway Company, now the Chicago and Great Southern Railway Company, and also reports that he has collected from Iroquois township seventeen hundred dollars on the first instalment of tax levied in aid of said railway company, and said railway company being entitled to receive said money upon their issuing stock to said townships for the amounts now received and for moneys heretofore paid by said treasurer, and said railroad company having issued said stock in proper form, signed by William A. Starin, president of said company, to the said townships of Grant and Iroquois, now it is ordered that a warrant be drawn in favor of said railway company for the sum of eight hundred dollars for collections from Grant township on the treasurer, and also that a warrant be drawn
1801 on the treasurer for seventeen hundred dollars for collection from Iroquois township in aid of said railway company.

Afterward, to wit, on the 7th day of March, 1883, a warrant for $200 was issued by the auditor on the treasurer of said Newton county to said Chicago and Great Southern Railway Company on the Grant township aid fund, as shown by the record of warrants issued.

And be it remembered that on the 9th day of June, 1883, being the sixth judicial day of the June term, 1883, of the commissioners' court of Newton county, Indiana, held at the auditor's office in Kentland, in said county, before the Honorable Joseph W. Chizum, Ebenezer Hunter, and Joshua J. Timmons, the board of commissioners of said county, the following proceedings were had in said matter, to wit:

Whereas it having been satisfactorily shown to this board that the Chicago and Great Southern railroad is rapidly nearing completion to the point which by law entitled them to the aid voted their company in this county, it is hereby ordered that the treasurer make a demand on the tax-payers of Grant and Iroquois townships and Goodland corporation for the balance of railroad tax now on the duplicate, to be paid on or before the first Monday of November next, and all of above tax unpaid at that time to be returned delinquent, and be subject to such penalties as all other taxes.

And be it remembered that on the 5th day of December, 1883, being the third judicial day of the December term, 1883, of the commissioners' court of Newton county, Indiana, held at the auditor's office in Kentland, in said county, before the Honorable Joseph W. Chizum, Ebenezer Hunter, and Joshua J. Timmons, the board of commissioners of said county, the following proceedings were had in said matter, to wit:

STATE OF INDIANA, } *ss:*
Newton County, }

In the Matter of the Tax Voted to [the] Chicago and *Grand* Southern Railway Company by Iroquois township.

Comes now said railway company by its president, H. Crawford, and makes proof that the said company has completed its road so as to entitle it to the payment of the last half of the tax voted in its aid by said Iroquois township. It is therefore ordered by the board that the auditor draw a warrant on the treasurer for three thousand four hundred and twelve dollars in favor of said company, payable out of the funds now collected and in the hands of the treasurer, and receive 68 shares of stock for above order in favor of Iroquois township.

And be it remembered that on the 6th day of December, 1883, being the fourth judicial day of the December term, 1883,
1802 of the commissioners' court of Newton county, Indiana, held at the auditor's office in Kentland, in said county, before the Honorable Joseph W. Chizum, Ebenezer Hunter, and Joshua J. Timmons, the board of commissioners of said county, the following further proceedings were had in said matter, to wit:

STATE OF INDIANA, } ss:
Newton County, }

In the Matter of [the] Tax Voted in aid of Chicago and *Grand* Southern Railway Company by Grant township.

Comes now George G. Jenkins, treasurer of Newton county, Indiana, and reports that he has of the railway tax collected of Grant township the sum of four thousand dollars to aid in the construction of the Chicago and Great Southern Railway Company through said township. Whereupon the board of county commissioners do now subscribe for Grant civil township eighty shares of the capital stock of said Chicago and Great Southern Railway Company, of the par value of fifty dollars each, and the auditor of Newton county is authorized to draw his order on the county treasurer in favor of said railway company for the sum of four thousand dollars in payment of said stock, said order to be delivered to said railway company on the delivery of the certificate of eighty shares of the capital stock of said railway company in favor of the trustee of Grant civil township.

And be it remembered that on the 6th day of December, 1884, being the sixth judicial day of the December term, 1884, of the commissioners' court of Newton county, Indiana, held at the auditor's office in Kentland, in said county, before the Honorable Ebenezer Hunter, Joshua J. Timmons, and Joseph W. Chizum, the board of commissioners of said county, the following further proceedings were had in said matter, to wit:

Whereas there appears to be by the report of the treasurer of Newton county eleven hundred and twenty-five dollars collected from Grant and Iroquois townships tax in aid of the Chicago and Great Southern railway, *and* the commissioners now subscribe for Grant civil township 13 shares of the capital stock of said railway company and likewise for 9½ shares for Iroquois civil township of such capital stock of said railway of the par value of fifty dollars per share, and the auditor is directed by order of the board of commissioners to draw warrants on the treasurer for $650 to pay for said stock for Grant township and for four hundred and seventy-five dollars to pay for said stock for Iroquois township on said railway giving said shares of stock and receipt for said money.

STATE OF INDIANA, } ss:
Newton County, }

I, John Z. Johnston, auditor of Newton county, Indiana, and *ex-officio* clerk of the commissioners' court within and for said county, do hereby certify that the above and foregoing is a true, full, and complete transcript of all proceedings had in said court, and of all papers recorded in the record of said court, in the matter of the aid voted by Grant and Iroquois townships, of said county, for the Indiana and Chicago Railway Company, now the Chicago and Great Southern Railway Company, for the construction of its road through

said townships, as the same now remains of record in the
1803 commissioners' record of said county, now in my office.

In witness whereof I have hereunto subscribed my name and affixed the seal of the board of commissioners of said county at Kentland, Indiana, this 19th day of November, 1885.

[SEAL.] JOHN Z. JOHNSTON,
Auditor, N. C.

Contract Between Crawford and Foster of June 23, 1881.

EXHIBIT C. John Gray, special commissioner.

This agreement made this 23d day of June, A. D. 1881, between William Foster, in behalf of himself and associates, of Goodland, Newton county, Indiana, as party of the first part, and Henry Crawford, of Chicago, Illinois, party of the second part, witnesseth:

That the party of the first part, in behalf of himself and associates, hereby sells and assigns to the said party of the second part the following certificates of stock and the shares thereby represented in the Indiana and Chicago Railway Company, to wit: certificates from 3 to 17, both inclusive, making the total number of shares of stock hereby transferred *being* 1,005 shares of the par value of $50,250, and as a condition of sale of this stock, the said party of the first part hereby expressly covenants and agrees that the said certificates of stock and the shares hereby transferred comprise the entire amount of stock of said corporation that has been actually issued, with the exception of ten thousand dollars thereof that has been issued to the party of the first part. And said party of the first part further guarantees that the said Indiana and Chicago Railway Company is under no pending obligations to issue any stock except as aforesaid, except in connection with and as payment for the procuring of certain rights of way, which said last-named stock liability will not exceed the sum of —.

The said party of the first part further agrees that the said Indiana and Chicago Railway Company and the said stock hereby transferred to the party of the second part is to be free and clear of all debts, liens, judgments, mortgages, liabilities, or incumbrances of any kind or character except as aforesaid.

And the said party of the first part further agrees that upon the second payment hereinafter mentioned the present board of directors are, at the request of the party of the second part, to resign their several places.

And it is further agreed that any and all pending construction contracts between the said railway company and all third parties shall be canceled and the said contracts released to the said railway company without any costs, loss, liability, or expense either to it or to the party of the second part herein.

In consideration of the premises the party of the second part on the conditions aforesaid purchases the said shares of stock, as evidenced by the said certificates, from the party of the first part and his associates, and agrees to pay therefor the sum of nineteen thousand (19,000) dollars as follows: $5,000 cash on the execution of these presents, $5,000 within ten days from the date hereof, and the re-

maining $9,000 within thirty days from the date hereof,
1804 during which time the said party of the second part shall
have opportunity to make examination to determine the situation of the property of said railway company and liens, contracts, rights of way, and the nature of any incumbrances thereon.

It is further agreed that the said stock certificates hereby purchased shall be this day deposited with the First National Bank of Chicago, Illinois, to be held by it in escrow until the full payment of the purchase-money herein.

WILLIAM FOSTER.
HENRY CRAWFORD.

Certificate of Stock Subscribed to June 22, 1881.

COMPLAINANT'S EXHIBIT 10. John Gray, special commissioner.

Indiana and Chicago railway.

GOOLAND, IND., *June* 22, 1881.

The amount of stock subscribed since organization of company, March 8, 1880, is as follows:

Name.	Shares.	Amount.	Am't Paid.
William Foster	20	$1,000	$200
William Foster	1,000	50,000	50,000
John B. Forseman	5	250	50
Geo. Hardy	1	50	50
T. C. Annabal	10	500	
S. C. Spoor	5	250	50
C. W. Hartley	5	250	50
N. C. Wickwire	5	250	25
Blake Wilson	5	250	25
John Wilson	1	50	
John Gordon	1	50	
James H. Taylor	2	100	10
N. D. Dyke	1	50	
Parker & Bro	1	50	
Jno. N. Bear	1	50	10
Jasper Shear	2	100	
Ziba F. Little	5	250	50
Jasper N. M'Connell	1	50	
Jno. W. Swan	1	50	
Silas Sink	1	50	
R. G. Odell	1	50	
	1,074	$53,700	$50,520
William Foster	200	10,000	10,000
	1,274	$63,700	$60,520

INDIANA & CHICAGO RAILWAY OFFICE, *June* 22, 1881.

I, Zibá F. Little (secretary), hereby certify that the above is a correct, full, and true copy of the records of stock subscriptions as appears upon the books of said company in the office at Goodland, Ind.

[SEAL.] Z. F. LITTLE, *Sec'y*

EXHIBIT D. John Gray, special commissioner.

Agreement between Crawford and Foster of March 15, 1882.

This agreement witnesseth: That Henry Crawford hereby purchases
from William Foster ten thousand dollars (par value) of the stock
of the Indiana and Chicago Railway Company, now known as the
Chicago and Great Southern Railway Company, and evidenced by
stock certificates Nos. 1 and 2, which certificates are now delivered
to said Crawford; and said Foster further agrees to assign and transfer, and procure to be assigned and transferred, the following fur-
ther stock subscriptions to the said railway company, all
1805 which subscriptions are unpaid, and are accepted by said
Crawford subject to all future payment and assessments, and
forever agrees to hold each and every one of said original subscribers
harmless from any and all further payment thereon, such stock
being as follows:

William Foster	800
M. L. Humston	250
T. C. Spoor	150
C. W. Hartley	200
Blake Wilson	208
Parker Bros.	50
Z. F. Little	200
J. B. Forseman	200
T. C. Annabal	500
J. H. Taylor	90
N. S. Dike	50
Jasper Shear	100
	$2,790

And said Foster further agrees to make no charge at any time hereafter for services or expenses of any kind against the said Chicago and Great Southern Railway Company for any transactions prior to this date; and he further agrees to make no charge of any kind for use or rent of grader prior to this date.

And in consideration of the transfer of said ten thousand dollars of said issued stock, and of such $2,790 of unpaid stock subscriptions, and as further full compensation to said Foster for all his services and expenses as an officer of or in behalf of the Chicago and Great Southern Railway Company, and as further full compensation and adjustment of any rent for or use of the grading-machine belonging to said Foster and others, the said Crawford agrees to pay the said

Foster the sum of ten thousand dollars in six months from the date hereof, and to issue his promissory notes therefor to evidence such agreed payment.

It is further agreed that on the execution of these papers the present board of directors of the railway company are to resign and their places are to be filled with such persons as said Crawford shall designate.

Witness our hands and seals this 15th day of March, 1882.

HENRY CRAWFORD. [SEAL.]
WILLIAM FOSTER. [SEAL.]

COMPLAINANT'S EXHIBIT H. John Gray, special commissioner.

Transfer of Stock by Henry Crawford to New Board of Directors, March 15, 1882.

I, Henry Crawford, hereby assign and transfer the number of shares of capital stock of the Chicago and Great Southern Railway Company set opposite the names of the following persons—to each such person one share of stock:

Henry Crawford, Jr.
William A. Starin.
D. H. Conklin.
F. F. Lacey.
H. Moore.
G. W. McDonald.
D. J. Lyon.
H. Meiselbar.

Witness my hand, March 15, 1882.

HENRY CRAWFORD.

1806 EXHIBIT K. John Gray, special commissioner.

Memorandum Sale of Iron Rails by Cleveland Rolling Mill Company.

Stubbs & Runyon, room 2, Tribune building.

CHICAGO, *Octo.* 10*th*, 1881.

Bought of Cleveland Rolling Mill Co. of Cleveland, Ohio, for ac. Chicago and Great Southern R'y Co., per Henry Crawford, of Chicago, Ills, one thousand (1,000) gross tons iron rails, at fifty & $\frac{25}{100}$ ($50.25) dollars per gross ton, to be delivered free on board cars at the works of the Cleveland Rolling Mill Co., Cleveland, O., between November 1st & 15th, 1881.

Payments to be made in cash on bills of lading.

Rails to be of the same pattern as furnished said R. R. Co. on previous contract (*i. e.*, C., W. & Mich.), and to weigh 52 lbs. per yard, and to be drilled according to specifications to be furnished by said R. R. Co. Rate of freight is hereby guaranteed not to exceed 75c. per ton — Cleveland to Sandusky, O.

STUBBS & RUNYON, *Brokers.*

Accepted :

CHICAGO & G'T SOUTHERN RAILWAY CO.,
By HENRY CRAWFORD.

EXHIBIT H. John Gray, special commissioner.

Account of Cleveland Rolling Mill Company.

Statement.

Form —.

CLEVELAND, OHIO, *December* 23, 1883.

Cleveland Rolling Mill Company, Nos. 99 and 101 Water street, to Chicago and Great Southern R. R.

1881.		
Nov. 14	$2,126	43
15	2,106	01
15	607	75
16	1,368	86
17	4,168	51
23	609	13
25	2,801	66
26	4,584	86
28	4,261	15
28	2,241	73
29	5,634	05
30	615	18
30	3,980	74
Dec. 2	10,209	95
5	6,962	32
	52,278	33
1883. CR.		
March 26	22,634	36
	29,643	97

1807 **EXHIBIT J.** John Gray, special commissioner.

Statement.

Form—

CLEVELAND, OHIO, *December* 26, 1883.

Cleveland Rolling Mill Company, Nos. 99 and 101 Water street, to Chicago and Great Southern R. R.

Summary.

DR.

As per statement attached			$29,643	97
Interest from average date of delivery to December 26. 1883, $5,278.33, at 6 per cent	$6,534	79		
Less interest on payment March 26, 1883, $22,634, to December 26, 1883, at 6 per cent.	1,018	54		
			5,516	25
			$35,160	22

Foster the sum of ten thousand dollars in six months from the date hereof, and to issue his promissory notes therefor to evidence such agreed payment.

It is further agreed that on the execution of these papers the present board of directors of the railway company are to resign and their places are to be filled with such persons as said Crawford shall designate.

Witness our hands and seals this 15th day of March, 1882.

HENRY CRAWFORD. [SEAL.]
WILLIAM FOSTER. [SEAL.]

COMPLAINANT'S EXHIBIT H. John Gray, special commissioner.

Transfer of Stock by Henry Crawford to New Board of Directors, March 15, 1882.

I, Henry Crawford, hereby assign and transfer the number of shares of capital stock of the Chicago and Great Southern Railway Company set opposite the names of the following persons—to each such person one share of stock:

Henry Crawford, Jr.
William A. Starin.
D. H. Conklin.
F. F. Lacey.
H. Moore.
G. W. McDonald.
D. J. Lyon.
H. Meiselbar.

Witness my hand, March 15, 1882.

HENRY CRAWFORD.

1806 EXHIBIT K. John Gray, special commissioner.

Memorandum Sale of Iron Rails by Cleveland Rolling Mill Company.

Stubbs & Runyon, room 2, Tribune building.

CHICAGO, *Octo.* 10*th*, 1881.

Bought of Cleveland Rolling Mill Co. of Cleveland, Ohio, for ac. Chicago and Great Southern R'y Co., per Henry Crawford, of Chicago, Ills, one thousand (1,000) gross tons iron rails, at fifty & $\frac{25}{100}$ ($50.25) dollars per gross ton, to be delivered free on board cars at the works of the Cleveland Rolling Mill Co., Cleveland, O., between November 1st & 15th, 1881.

Payments to be made in cash on bills of lading.

Rails to be of the same pattern as furnished said R. R. Co. on previous contract (*i. e.*, C., W. & Mich.), and to weigh 52 lbs. per yard, and to be drilled according to specifications to be furnished by said R. R. Co. Rate of freight is hereby guaranteed not to exceed 75c. per ton — Cleveland to Sandusky, O.

STUBBS & RUNYON, *Brokers.*

Accepted:

CHICAGO & G'T SOUTHERN RAILWAY CO.,
By HENRY CRAWFORD.

EXHIBIT H. John Gray, special commissioner.

Account of Cleveland Rolling Mill Company.

Statement.

Form —.

CLEVELAND, OHIO, *December* 23, 1883.

Cleveland Rolling Mill Company, Nos. 99 and 101 Water street, to Chicago and Great Southern R. R.

1881.		
Nov. 14	$2,126	43
15	2,106	01
15	607	75
16	1,368	86
17	4,168	51
23	609	13
25	2,801	66
26	4,584	86
28	4,261	15
28	2,241	73
29	5,634	05
30	615	18
30	3,980	74
Dec. 2	10,209	95
5	6,962	32
	52,278	33
1883. CR.		
March 26	22,634	36
	29,643	97

1807 EXHIBIT J. John Gray, special commissioner.

Statement.

Form—

CLEVELAND, OHIO, *December* 26, 1883.

Cleveland Rolling Mill Company, Nos. 99 and 101 Water street, to Chicago and Great Southern R. R.

Summary.

DR.

As per statement attached		$29,643 97
Interest from average date of delivery to December 26, 1883, $5,278.33, at 6 per cent	$6,534 79	
Less interest on payment March 26, 1883, $22,634, to December 26, 1883, at 6 per cent.	1,018 54	
		5,516 25
		$35,160 22

COMPLAINANT'S EXHIBIT 2. John Gray, special commissioner.

Statement of Cleveland Rolling Mill Company. Rails Furnished to November 28, 1881. *Receipt of Payment.*

Chicago and Great Southern Railway Company to Cleveland Rolling Mill Company, Dr.

Nov. 14	$2,126	43
15	2,106	01
15	607	75
16	1,368	86
17	4,168	51
23	609	13
25	2,801	66
26	4,584	86
28	4,261	15
	$22,634	36

Duplicate.

Chicago and Great Southern Railway Company to Cleveland Rolling Mill Company, of Cleveland, Ohio, Dr.

1883.

Rails as per bills attached	$22,634	36

Received, Chicago, March 24, 1883, of the Chicago and Great Southern Railway Company, the sum of twenty-two thousand six hundred and thirty-four dollars and thirty-six cents ($22,634.36) in full for the above account.

3-25-'83.

CLEVELAND ROLLING MILL COMPANY,
By F. B. STUBBS.

COMPLAINANT'S EXHIBIT 12. John Gray, special commissioner.

Unsigned Memoranda of Wm. Foster as to Disposition $1,000,000 *First-Mortgage Bonds.*

Memorandum of agreement between the Chicago and Great
1808 Southern Railway Company and Henry Crawford as to
applying the proceeds of an issue of one million dollars of
bonds under date of November 1st, 1881.

First. In payment of Block Coal road, purchased by said Crawford and the contract assigned by him to the Chicago and Great Southern Railway Company, with which it is to be consolidated, as provided by law.

Second. To reimburse said Crawford for money advanced and to be hereafter advanced for construction and equipment of the Chicago and Great Southern railway, — which the bills of purchase and vouchers for the necessary payments shall be the evidence of expenditures made.

Third. Any balance from the proceeds of the first issue or any subsequent issue shall be used and applied to the extension and development of the line of road covered by the mortgage of November 1st, 1881.

Fourth. It is understood and agreed that said Crawford is to furnish the necessary amount of money to pay the debts contracted since the first of July, 1881, and to complete grading and superstructure and to furnish and equip the line of road from junction with Air Line to Attica as fast as the work can be done.

EXHIBIT B. John Gray, special commissioner.

Proposed Construction Contract of Henry Crawford, Rejected by the Foster Board of Directors February 7th, 1882.

This agreement, made this — day of October, A. D. 1881, between Henry Crawford, the party of the first part, of Chicago, Illinois, and the Chicago and Great Southern railway, a corporation organized under the laws of the State of Indiana, the party of the second part, witnesseth:

That for and in consideration of the payments and covenants of the party of the second part, as hereinafter set forth, the party of the first part hereby agrees to procure the right of way for, construct, and equip the northern division of the railway of the party of the second part, extending from a junction with the Louisville, New Albany and Chicago railway about nine miles northwest of Rensselaer and thence southwardly through the counties of Jasper, Newton, Benton, Warren, Fountain, Parke, and Clay to Brazil, Indiana, in accordance with the terms and specifications hereafter set out—that is to say, the said party of the first part agrees—

First. To procure and complete right of way of sufficient width over and upon the said entire route for the line of railway and also sufficient and suitable grounds for sidings, depots, shops, switch-yards, turn-table, water-tanks, and other appendages ordinarily needed by a railway.

Second. That he will also agree in a proper and workmanlike manner to lay down two thousand six hundred and forty ties to the mile, either of oak, hemlock, or cedar, and lay down thereupon either iron or steel rails, to be not less than fifty-two pounds to the linear yard, and securely fasten them by fish-plates, four bolts to each joint, and thoroughly spike down the rails over the entire length of line; and will also procure and put down all of the necessary crossing frogs, turn-outs, switch-stands, and appurtenances necessary
1809 to complete the line ready for business, all such graduation, track-laying, ties, and rails to be of first-class quality and construction, and the whole work to be done in a workmanlike and proper manner, and the road to be surfaced with a smooth and proper surface, and all necessary and proper bridges and cattle-guards to be placed along the line.

Third. The party of the first part will also erect all such necessary depots, shops, turn-tables, and stock-pens as may be necessary and proper for the handling of such business as may be offered to the said line on its completion, and he will also put in proper sidings at convenient points, to enable the business of the line to be handled with economy and dispatch. Said party of the first part shall also put upon said road proper equipment, engines, passenger, and freight cars.

Fourth. He will also erect on the right of way alongside of the road a line of telegraph and procure the same to be properly wired, and have instruments placed in sufficient depots along the line of said road to afford proper telegraph facilities for the general public and also for the handling of traffic over and upon the said road.

The party of the first part agrees that the said work shall be begun immediately and be prosecuted in such a manner that the same will be entirely completed by the first day of June, 1883:

Provided, That if any injunctions or unforeseen circumstances or bad weather or failure of contractors delays the ultimate completion of the line that the said party of the first part may have the contract time for completion sufficiently extended to meet any such unexpected delays.

And in consideration of the above promises on the part of the party of the first part the said party of the second part hereby agrees, as an agreed compensation for the value of such work, material, labor, and the procuring of the right of way as aforesaid, to pay to the party of the first part:

First. All donations of stock, right of way, lands, labor, or money that have been hitherto or hereafter may at any time be acquired by the said party of the second part in its own name or for its use, behoof, or benefit.

Second. The party of the second part further agrees that it will at once procure to be issued two million dollars of six per cent. gold bonds, which shall be secured by a mortgage, which shall be the first lien upon the northern division of the railway of the party of the second part, together with all its appurtenances, equipments, contract rights, coal lands, and franchises of every description, and also tolls to be had and levied thereon.

Third. The party of the second part will also pay fifteen hundred thousand dollars in its preferred stock, which shall constitute the entire issue thereof, which shall bear and be authorized to draw six per cent. interest on dividends per annum, which shall be payable for each and every year after the issue thereof out of the net revenue of the road, after the payment of interest upon the bonded obligations and the expenses of operating the property, taxes, necessary repairs, and renewals; and if the revenue for any one year shall not be sufficient to pay off such agreed six per cent. dividends on 1810 such preferred stock, then the arrearages are to accumulate, and all arrears thus accruing on the fifteen hundred thousand dollars of preferred stock shall be fully paid, with interest, calculated at six per cent. per annum from the issue of said stock, before any dividend shall be paid on any of the common stock of the party of the second part.

It is further agreed that the payments of bonds and stock are to be made by the party of the second part to the party of the first part in proportion from time to time as the work progresses, and that the party of the first part shall be entitled to demand and have a full settlement on each and every five miles of completed track laid by him, at the rate of fifteen thousand dollars for each such mile of main track laid by him, in said first-mortgage bonds, and also ten thousand dollars in such preferred stock per mile of main track.

It is further agreed that the said party of the first part is to have full possession and control of each and every part of said line until the entire completion thereof up to the date aforesaid.

It is further agreed that the said party of the second part is from time to time to advance to and for the use of the party of the first part its promissory notes, for the purpose of obtaining means to pay for the material and labor to be used on said line, but said promissory notes are to be paid by the party of the first part, and the said party of the second part is to be forever protected against any liability or cost thereon.

It is further agreed that if the said party of the second part, at any time before the completion of said northern division, decides to extend its line southwardly from Brazil, that in that case said party of the first part shall have the right to construct and equip such extension, and shall receive the same amount and character of payment and compensation as is hereinbefore set out for each mile of main track—that is to say, twenty thousand dollars per mile in first-mortgage six per cent. bonds, and fifteen thousand dollars per mile in six per cent. preferred stock, and all the donations that the said party of the second part may procure upon the said southern division.

Certificates of Stock Sold by Foster and Others to Crawford.

Solicitor for defendants offered in evidence twelve certificates of stock, numbered from one to twelve, inclusive, calling each for 100 shares of stock of the par value of $5,000. The following is a copy of one of said certificates with the endorsements thereon, all being substantially alike:

$5,000.00. No. 1.

Indiana and Chicago Railway Company stock certificate.

This is to certify that William Foster, or his assignee herein, is entitled to one hundred shares of fifty dollars each of the capital stock of the Indiana and Chicago Railway Company on the surrender of this certificate to the secretary of this company.

1811 Witness the corporate seal and —.

WILLIAM FOSTER, *Pres.*

Z. T. LITTLE, *Sec.*

Approved.
Goodland, Ind., May 11, 1881.

GEORGE HARDY,
Chairman Executive Committee.

Endorsed on back as follows:

Know all men by these presents that I, William Foster, for value received, have bargained, sold, assigned, and transferred, and by these presents do sell, assign, and transfer to —— —— the within one hundred shares of stock of the Indiana and Chicago Railway Company standing in my name in the books of said company; and I do hereby constitute and appoint —— —— as my true and lawful attorney, irrevocable for me and in my name to make any and all necessary transfers on the books of said company.

Witness my hand and seal this — day of ——, A. D. 1881.

WILLIAM FOSTER. [SEAL.]

Witness:
H. CRAWFORD.

Solicitor for defendants also offered in evidence stock certificates numbered 13, 14, 15, 16, and 17, each for one share of fifty dollars, said certificates being all of the same tenor and effect, except that they were originally issued to William Foster, George Hardy, Silas Sink, John Swan, Richard D. Odele, and Jasper N. McConnell, a copy of one of which said certificates, with the endorsements thereon, is as follows:

$50. No. 13.

Indiana and Chicago Railway Company stock certificate.

This is to certify that George Hardy, or his assignee herein, is entitled to one share of fifty dollars each of the capital stock of the Indiana and Chicago Railway Company on the surrender of this certificate to the secretary of this company.

Witness the corporate seal and —.

WILLIAM FOSTER, *Pres.*

Z. T. LITTLE, *Sec.*

Approved.
Goodland, Ind., June 22, 1881.

GEORGE HARDY,
Chairman Executive Committee.

Endorsed on back as follows:

For value received I hereby assign the within share of stock to Henry Crawford.

June 22, 1882.

GEORGE HARDY.

Witness:
F. F. LACEY.

Extracts from the Record-Book of the Chicago and Great Southern Railway Company (Formerly the Indiana and Chicago Railway Company).

1812 From articles of association filed in office of the secretary of state, March 8, 1880:

Article two.

The capital stock of this association shall be one million five hundred thousand dollars, divided into thirty thousand shares of fifty dollars each.

Article three.

There shall be nine directors to manage the affairs of the company, and William Foster, William F. Singleton, Milton L. Humston, John B. Foresman, Newton C. Wickwire, Solomon C. Spoor, George Hardy, Ziba F. Little, and Blake Wilson are hereby appointed such directors, who shall continue as such until their successors are duly chosen and qualified.

Article four.

The object of this association shall be to build, own, possess, control, maintain, and use the railway hereafter to be built, purchased, or leased, its property, franchises, and appurtenances, and to run and operate the said lines of railway extending from the terminus of a line of road to be built or acquired from the city of Chicago to the State line of Indiana and Illinois, at or near a point on the State line aforesaid, at or near the northwest corner of the southwest quarter of section of number thirty-six (36), in township number thirty-eight north, of range ten west, in Lake county, in the State of Indiana, thence extending southwardly, bearing to the east through the county of Lake to the town of Goodland, in the county of Newton, in the State of Indiana; thence extending in a southwardly direction through the counties of Newton, Benton, and Warren to the town of Attica, in the county of Fountain, in the State of Indiana, the distance as near as may be of about one hundred miles, the exact location and distance to be determined by actual survey, forming such conections and making such arrangements over existing lines of road as the best interest of the company may require.

GOODLAND, IND'A, *March 13th*, 1880.

Articles of association for the construction, owning, and maintaining a contemplated railroad within the State of Indiana, to be known as the Indiana and Chicago Railway Company, having the requisite amount of stock subscribed by the required number of stockholders, naming nine of the subscribers to such stock as directors to manage the affairs of said company, having been on the 8th day of March, 1880, filed in the office of the secretary of state in compliance with an act of the Legislature of said State entitled "An act to provide for the incorporation of railroad companies," and approved May 11, 1852, at a meeting of said directors held at Goodland, Indiana—present, William Foster, John B. Foresman, George Hardy, Solomon C. Spoor, Ziba F. Little, Blake Wilson, and N. C. Wickwire—on motion, William Foster was made chairman and Z. F. Little, secretary.

William Foster was elected president.

George Hardy was elected vice-president.

Ziba F. Little was elected secretary.

Solomon C. Spoor was elected treasurer.

1813 Blake Wilson, N. C. Wickwire, and George Hardy, execucommittee.

An assessment of ten per cent. on the capital stock was made payable to the treasurer on or before April 1, 1880. Ordered that a preliminary survey be made of the proposed line of road from the crossing of the Kankakee river to Crown Point, and ascertain the amount of aid that can be had on the line of road. Also to take measures to secure an election to vote a tax to aid in the construction of said road through the townships in Lake county, and report at next meeting of the directors.

Adjourned.

——— ———, *Pres't.*
Z. F. LITTLE, *Sec'y.*

GOODLAND, INDIANA, *September* 16, 1880.

At the meeting of the board of directors of the Indiana and Chicago Railway Company—present, William Foster, president; George Hardy, Blake Wilson, S. C. Spoor, N. C. Wickwire, and Z. F. Little—on motion, the following by-laws were adopted, by all voting in the affirmative.

By-Laws of the Indiana and Chicago Railway Company.

Article 1st. When the directors of this company shall have been elected, as prescribed by the laws of the State of Indiana, they shall organize by the election of a president, vice-president, secretary, treasurer, and two members, who, together with the vice-president, shall constitute an executive committee.

2d. The duties of the president shall be to preside at meetings of the directors; to take general management of the affairs and business of the company, and to conduct the same under the direction and supervision of the board of directors, and to make such reports relative thereto as they may from time to time direct.

3d. It shall be the duty of the vice-president to preside at meetings of directors in the absence of the president, and, in case of a vacancy in the office of president, shall perform all the duties incumbent upon such office until such vacancy shall have been filled by the board of directors, and shall by virtue of his office be chairman of the executive committee.

4th. The duties of the secretary shall be to keep a correct record of the proceedings of all meetings of the directors; to collect all money due the company, and pay the same to treasurer; to keep the accounts of the company, and perform such other duties as the directors may direct.

5th. It shall be the duty of the treasurer to receive all moneys belonging to the company from the secretary, and to pay all claims against the company when signed by the president and secretary and approved by the executive committee; to keep a correct record of all receipts and disbursements, and to make such reports relative thereto as the board of directors shall from time to time require.

6th. It shall be the duty of the executive committee to take general supervision over the financial affairs of the company, and shall make such recommendations relative to the financial policy of the company to the board of directors as they shall deem to the

1814 best interest of the company to have adopted, and shall audit all claims against the company when signed by the president and secretary.

7th. The secretary and treasurer shall execute such bond for the faithful performance of their duties as the board of directors may require.

8th. Stock of this company may be transferred by having a record of such transfer made upon the books of the company by the secretary

9th. All meetings of the stockholders and directors of the company shall be held in the office of the company in the town of Goodland, except as otherwise ordered by the board of directors.

10th. The annual meeting of the stockholders for the election of directors shall be held on the 1st Monday in May of each year, and the regular meetings of the board of directors shall be held on the first Tuesday in each month. Meetings of the directors may be called at any time by the president by notifying each member of the board prior to time of such meeting.

11th. In case it shall happen at any time that an election of the board of directors shall not be made on the day prescribed by section ten of these by-laws the directors shall call a meeting of the stockholders for such election in the manner prescribed by law governing such meetings, to be held within sixty days from the time such election should have been made.

12th. Five directors present at any meeting of the board shall constitute a quorum for the transaction of business, and a majority vote shall decide all questions before the board.

13th. These by-laws may be altered or amended by a two-thirds vote of the members of the board of directors present at any meeting.

14th. In case of vacancies in the board of directors from any cause whatever such vacancies shall be filled by appointment by the remaining members of the board.

On motion, the secretary was ordered to collect the unpaid balance of the assessments on the capital stock heretofore made, and pay the same over to the treasurer, and of this order he should notify each delinquent stockholder.

There being no further business before the board the same is now adjourned.

WILLIAM FOSTER, *Pres't.*
Z. F. LITTLE, *Sec'ry.*

Stockholders' Meeting, May 2d, 1880.

Annual meeting of the stockholders of the Indiana and Chicago R'y Co.

OFFICE OF THE INDIANA & CHICAGO R'Y CO.,
GOODLAND, IND., *May* 2, 1881.

The meeting was called to order, and, on motion of Hugh Parker, John Gordon was elected president and T. C. Annabel, secretary.

The following report of the president on behalf of the board of directors was read, and on motion was received and ordered to be spread on the records, viz:

OFFICE OF THE INDIANA & CHICAGO R'Y CO.,
May 2, 1881.

To the stockholders of the Indiana & Chicago railway:

1815 Your board of directors would respectfully report the results growing out of the organization, location, and construction of the line of road for the year ending May 1st, 1881.

The articles of association were filed March 8th, 1880, and elections order on the petition of the tax-payers in Grant and Iroquois townships, Newton county, which resulted—

In favor of tax in Grant	$15,000 00
" " Iroquois	10,000 00
In Benton Co.:	
In favor of tax in Union	9,000 00
" " Oak Grove	15,000 00
	$49,000 00
The amount of stock subscriptions	$53,950 00
" " " tax voted	49,000 00
Total subscriptions	$102,950 00

The tax is payable ½ in Jan'y, 1881, and ½ in Jan'y, 1882, contingent on the completion of the road, the stock to the amount of $50,000, by agreement, to be paid in grading the road, and balance of the stock available will be required in expenses of organization and location.

The line of road is located from Goodland to Attica, a distance of 34 miles, over a very favorable line, and grading from Goodland to Oxford is well under way, the right of way is mostly secured, aid is promised through Warren Co., and at Attica in construction—bridging Wabash river; from Goodland to Iroquois river the largest part of grading is done, and right of way secured with exception of two pieces of land.

The distance from Goodland to the Kankakee river is twenty-eight miles, through *the* lands that are easily graded, and sufficient aid is offered to justify a permanent location; from Kankakee river to Crown Point is seventeen miles; Crown Point to South Chicago, twenty-two miles, making the whole distance from Attica to South Chicago one hundred and one miles, and to Chicago not exceeding one hundred and fifteen miles, showing a shorter line and more direct and easier grades, with connections, making shorter than any line from La Fayette or Indianapolis to Chicago.

The action of the board is required to clear up the contracts, to make available aid voted, and authorize the negotiations of bonds and further disposition of stock.

All of which is respectfully submitted.

W. FOSTER, *Prest.*

On motion of T. C. Annabal the meeting proceeded to the election of directors for the ensuing year, and thereupon Esq. N. S. Dyke was called and administered the usual oath to Hugh Parker, inspector; Jasper Shear and John Wilson, judges; T. C. Annabal and John Gordon, clerks, the election board duly chosen before by the directors, each of such being stockholders of the company, and said board being duly organized the polls were duly opened, and after all the votes cast which were present, and the same being counted, the result of said election was as follows:

William Foster received 1,056 votes.
Geo. Hardy " 1,056 "
S. C. Spoor " 1,056 "
John B. Forseman received 1,056 votes.
1816 Silas Sink received 1,056 votes.
Z. F. Little " 1,056 "
John W. Swan " 1,056 "
Jasper N. McConnell " 1,056 "
Richard G. Odell " 1,056 "

That being all the votes cast and more than two-thirds of all the votes entitled to be cast, the parties above named were duly declared elected as the board of directors for the ensuing year, and the election board were instructed to issue to each of said parties a certificate of their election.

There being no further business before the meeting, the same was adjourned.

T. C. ANNABAL, *Secretary.*
JOHN GORDON,
Chairman Stockholders' Meetings.

Office of Indiana and Chicago Railway Company.

MAY 11, 1881.

The executive committee have audited and adjusted with William Foster for claim of salary from commencement of organization to May 1, 1881, at $5,000, and for amount of expenses in organizing, stationery, and other expenses $5,000, for which stock certificates Nos. 1 and 2 are this day issued for 100 shares each. The report of the engineer for work done, under grading contract in 1880, from Iroquois township to Oxford, Indiana: Amount work done, 90,000 yards, $18,860; retained, $3,860. Stock certificates Nos. 3, 4, and 5 issued for the $5,000; also issued on said contract for engineering stock certificate No. 6 for $5,000.

GEO. HARDY,
Chairman Executive Committee.

Attest: Z. F. LITTLE, *Secretary.*
WILLIAM FOSTER.
JOHN B. FORESMAN.

Office of Indiana & Chicago Railway Co.

JUNE 22, 1881.

The executive committee, at meeting this day—present, George Hardy, chairman; William Foster, and John B. Foresman—considered and allowed the following report or estimate of R. A. Hamilton, engineer in charge, as follows, to wit:

"I herewith report the following work, as per contract, done to date, viz:

Amount of earth-work to date, 141,832 cubic yards.

Less estimate of May 11, 1881, 90,000. The total amount due for said work, $48,471.87, and for stone culverts and excavation for same at Pine creek, due $628.90=$49,100.77.

(Signed) R. A. HAMILTON,
Engineer in Charge.

Now, we find by reference to audit and adjustment with contractor May 11, 1881, certificates of stock 3, 4, and 5 were issued for $15,000, leaving balance of $34,100.77 due contractor, on which we now allow and issue stock certificates Nos. 7, 8, 9, 10, 11, and 12, each for $5,000, of one hundred shares each—in the aggregate, $30,000—retaining balance due contractor, $4,100.77, for fulfillment of contract.

1817 GEO. HARDY,
Chairman Executive Committee.

Attest: Z. F. LITTLE, *Secretary.*
WILLIAM FOSTER.
JOHN B. FORESMAN.

Office of the Indiana and Chicago Railway Co.

GOODLAND, IND., *July* 14, 1881.

Special meeting of the board of directors.

Present: William Foster, president; George Hardy, vice-president; S. C. Spoor, treasurer; Z. F. Little, secretary; John W. Swan, John B. Forsman, directors.

The object of the meeting having been stated by the president, *and* thereupon the following resolution was adopted, viz:

Resolved, That the name of this company be, and the same is hereby, changed to the "Chicago and Great Southern Railway Company," which shall, after this date, be the corporate name of this company.

Also the following resolution was adopted:

1818 Resolved, That the order passed on the 7th day of June, 1881, by the board of directors at their meeting at that date authorizing the issue of bonds secured by deed of trust or mortgage upon the property of said company to the amount of ten thousand dollars per mile for superstructure and five thousand dollars per mile for equipment, and the power and authority thereby conferred upon the executive committee in relation thereto be, and the same is hereby, annulled and cancelled, and said executive committee are hereby directed to take no further steps in the matter.

The following resolution was adopted:

Resolved, That for the purpose of borrowing money to construct, complete, and equip the northern division of this company's railway the president be, and he is hereby, directed to prepare in the usual form and sign, seal, and properly execute a series of two thousand (2,000) bonds of one thousand dollars each, the principal whereof shall be payable in forty years, bearing interest at the rate of 6 per cent. per annum, payable quarterly, both principal and interest payable in gold coin, and without relief from valuation or appraisement laws.

Resolved, further, That for the purpose of securing the payment of the principal and interest of the said issue of bonds, amounting in the aggregate to two million of dollars, that the president be also authorized and required to forthwith prepare in the usual form and with proper convenants a mortgage or trust deed to such trustee as shall be selected by him, conveying to such trustee all and singular the northern division of the railway of this company, extending from a junction with the Chicago and Indianapolis Air Line railway southwardly to Brazil, in Clay county, together with all the real estate, buildings, right of way, appurtenances of every description, equipment, and contract rights, together with the franchises thereto appertaining, and the tolls and income to be levied therefrom.

And the said president is further authorized and required to sign, seal with the corporate seal, and properly acknowledge and deliver such deed of trust or mortgage, and cause the same to be properly recorded in each county through which such northern division is situate.

Resolved, further, That the signature of the secretary to the coupons attached to such bonds shall be engraved.

The following letter of resignation of the secretary is now received, viz:

GOODLAND, IND., *July* 14, 1881.

To the honorable board of directors of the Indiana and Chicago Railway Company:

GENTLEMEN: I hereby tender my resignation as secretary of the Indiana and Chicago Railway Company, to take effect on the 15th ultimo. All of which is respectfully submitted for your consideration.

Resp'y yours, &c., Z. F. LITTLE.

Which resignation is now accepted by the board, and an election to fill the vacancy caused [by the] resignation of Z. F. Little is now held; which election resulted in the choice of Henry Crawford, Jr., as such secretary to fill out the unexpired time of Z. F. Little, resigned.

1819 The president is hereby authorized to obtain a new seal for the corporation, with proper and suitable inscription, and the board now adjourn.

WILLIAM FOSTER, *President.*

—— ——, *Secretary.*

Z. F. L.

Directors' Meeting, October 29, 1881.

Office of the Chicago and Great Southern Railway Company.

GOODLAND, IND., *Oct.* 29, 1881.

At a meeting of the directors of the Chicago and Great Southern Railway Company—

Present: William Foster, president; George Hardy, vice-pres't; S. C. Spoor, treasurer; Z. F. Little, John W. Swan, J. B. Forseman, directors.

L. H. Wilson was appointed secretary *pro tempore.*

Resolved, That all former resolves of this board authorizing the issue of bonds by this company be repealed.

Resolved, That for the purpose of borrowing money to construct, equip, and complete the northern division of this company's railway the president be, and is hereby, directed to prepare, in the usual form, and sign, seal, and properly execute a series of two thousand (2,000) bonds of one thousand dollars each, bearing date November 1, 1881, the principal whereof shall be payable on January 1, A. D. 1912, bearing interest at the rate of six per cent. per annum, payable semi-annually on the first days of January and July, both principal and interest payable in gold coin of the present standard weight and fineness, and without relief from valuation or appraisement laws.

Resolved further, For the purpose of securing the payment of the principal and interest of the said issue of bonds, amounting in the aggregate to two million dollars, that the president be also authorized and required to forthwith prepare, in the usual form and with proper covenants, a mortgage or trust deed to such trustee as may be selected by him, conveying to such trustee all and singular the northern division of the railway of this company, extending from a junction of the Louisville, New Albany and Chicago railway northwest of Rensselaer southwardly to Brazil, in Clay county, together with all the real estate, buildings, rights of way, appurtenances of every description, equipment, contract rights, and coal lands, together with the franchises thereto appertaining and the tolls and income to be levied therefrom; and the said president is further authorized and required to sign, seal with the corporate seal, acknowledge, and deliver such deed of trust or mortgage in due form of law and cause the same to be properly recorded in each county through which said northern division is situate.

Resolved further, That the signature of the secretary to the coupons attached to such bonds shall be engraved.

Resolved further, That the mortgage and bonds be copied and
placed upon the records of the company and the secretary attest the
same under the seal of the company, and the president be
1820 authorized to do all acts necessary to perfect the execution
and negotiation of the bonds.

WILLIAM FOSTER, *President.*
L. H. WILSON,
Secretary pro tempore.

Directors' Meeting, February 7th, 1882.

Office of Chicago & G't Southern R'y.

GOODLAND, IND., *February 7th,* 1882.

General meeting of the board of directors. Present: W. Foster, president; Geo. Hardy, vice-president; S. C. Spoor, treasurer; Z. F. Little, J. W. Swan, J. B. Forseman, J. N. McConnell, and R. G. Odle; L. H. Wilson, secretary *pro tempore.*

Ordered, that the president shall confer with Henry Crawford and demand that payment for labor shall not be made later than the 15th of each month for the preceding month.

On motion of J. W. Swan, L. H. Wilson was nominated and duly elected "assistant secretary," with full authority to perform all the duties incumbent upon the office of secretary in his absence.

The president submitted a proposed contract drawn by H. Crawford, relative to his acting as "contractor" for the "Chicago and Great Southern Railway Company," which, atter being duly read and considered, was unanimously rejected.

WILLIAM FOSTER, *Pres't.*
L. H. WILSON,
Secretary pro tempore.

Directors' Meeting; March 15, 1882.

Office of Chicago and G't So. R'y Co.

GOODLAND, INDIANA, *March 15th,* 1882.

At a special meeting of the board of directors—present, W. Foster, president; S. C. Spoor, Geo. Hardy, J. W. Swan, Z. T. Little, J. M. McConnell—W. Foster's resignation as director and president of this company was presented and accepted by the board.

On motion, H. Crawford, Jr., was nominated and elected director in place of W. Foster, resigned. Appeared and took his seat.

Ziba F. Little tendered his resignation as director of the company, which was accepted.

On motion, W. A. Starin was elected a director of the company in place of Ziba F. Little, resigned. Appeared and took his seat.

S. C. Spoor tendered his resignation as director of the company, which was accepted.

On motion, D. H. Conklin was elected director in place of S. C. Spoor, resigned. Appeared and took his seat.

J. W. Swan presented his resignation as director of the company, which was accepted.

On motion, F. F. Lacy was elected director in place of J. W. Swan, resigned. Appeared and took his seat.

J. N. McConnell tendered his resignation as a director of the company, which was accepted.

On motion, H. Crawford was duly elected a director in place of J. N. McConnell, resigned. Appeared and took his seat.

1821 Geo. Hardy, as vice-president of the company, gave up the chair, and H. Crawford was elected president *pro tempore.*

The resignation of Geo. Hardy as director and vice-president of the company was tendered and accepted.

On motion, Henry Moore was duly elected director in place of Geo. Hardy, resigned.

The written resignation of Jno. B. Forseman as director of the company was presented and accepted.

On motion, D. J. Lyon was elected director in place of J. B. Forseman, resigned.

Resignation of Silas Sink as director of the company was presented and accepted.

On motion, Geo. W. McDonald was elected a director of the company in place of Silas Sink, resigned.

Resignation of R. G. Odle as a director of the company was presented and accepted.

On motion, Henry Meiselbar was duly elected director in place of R. G. Odle, resigned.

On motion, H. Crawford was duly elected president of the company.

H. Crawford, Jr., was elected treasurer of the company.

D. H. Conklin was elected general superintendent for the company.

Adjourned to meet, on call of president, at Chicago, Illinois.

H. CRAWFORD,
President.
L. H. WILSON,
Assistant Secretary.

Directors' Meeting, March 18, 1882.

CHICAGO, *March* 18, 1882.

The board of directors of the Chicago and Great Southern Railway Company met at the office of the company, at 125 Dearborn street, in pursuance of the call of the president.

There were present all the directors except McDonald and Moore.

Henry Crawford resigned his position as president and director, which resignation was, on motion, accepted.

William A. Starin was thereupon chosen president of the company.

The president reported to the board that in obedience to the former orders of the board a mortgage or trust deed had been executed to John C. New, of Indianapolis, Indiana, dated November 1, 1881, to secure an issue of $2,000,000 6-per-cent. bonds of this company, which mortgage has been duly recorded in all the counties wherein the line of road is situate.

Whereupon it was resolved that the execution, delivery, and record of such mortgage to said John C. New be, and the same is hereby, in all things approved, and that the said trust deed shall be copied at length in the minutes of this meeting.

And said deed reads as follows:

Mortgage to John C. New, Trustee.

This indenture, made and entered into this first day of November, A. D. one thousand eight hundred and eighty-one, by and

1822 between the Chicago and Great Southern Railway Company, party of the first part, and John C. New, of Indianapolis, Indiana, party of the second part, as trustee for the uses and purposes hereinafter set forth, witnesseth:

Whereas the said party of the first part is a corporation duly created by and existing under the laws of the State of Indiana, and is the owner of all and singular the line of railway, coal lands, equipment, appendages, and franchises hereafter more particularly described, together with the franchises and powers to operate the same and levy and collect tolls thereon, all and singular, which property and franchises are now in the possession and use of said party of the first part; and

Whereas the said party of the first part has full authority and power under the laws of the State of Indiana to borrow money for its corporate purposes, and to enable it to construct, complete, improve, equip, and operate its road, and has the further authority to issue its corporate bonds to effect such loan, and also full authority to secure the same by mortgage or deed of trust upon the northern division of its railroad, constructed and to be constructed, coal lands, equipment, franchises and income of the said party of the first part, as hereafter described; and

Whereas the board of directors of said party of the first part did, at a regular meeting duly convened and held on the twenty-ninth day of October, 1881, resolve, that for the purpose of borrowing money for the corporate purposes aforesaid, the said party of the first part should prepare, sign, seal, and negotiate a series of bonds, amounting in the aggregate to two million dollars ($2,000,000) in the form following, except as to numbers, viz:

UNITED STATES OF AMERICA, *State of Indiana.*

$1,000 No. —.

First-Mortgage Northern Division Gold Bond.

The Chicago and Great Southern Railway Company, a corporation existing under the laws of the State of Indiana, for value received, promises to pay to John C. New, of Indianapolis, Indiana, or bearer, the sum of one thousand (1,000) dollars in gold coin of the United States, of the present standard of weight and fineness, at the office of the Central Trust Company, in the city of New York, on the first day of January, in the year one thousand nine hundred and twelve, with interest, payable in like gold coin of the United States, at the rate of six per cent. per annum, on the first days of January and July of each year, on the presentation and surrender of the annexed interest warrants, according to their tenor.

The principal and interest of this bond is payable without relief from valuation or appraisement laws.

This bond is one of a series of like date, tenor, and effect, amountin the aggregate to two million (2,000,000) dollars, being two thousand bonds of one thousand dollars each, numbered consecutively from 1 to 2,000, inclusive, all such bonds being equally secured by a first mortgage or trust deed of even date herewith conveying all and singular the northern division of said Chicago and Great 1823 Southern Railway Company, wherever situate, together with all its property, equipment, appurtenances, and franchises, unto said John C. New, of Indianapolis, Indiana, as trustee, which said mortgage or trust deed has been duly recorded according to law in each of the counties of Indiana where said northern division is situate.

This bond shall pass by delivery or by transfer on the books of said railway company, at its agency in the city of New York, and after any such registration of ownership on the books of such agency, duly certified on the back hereof by the transfer agent, no transfer hereof shall be valid or pass any title hereto unless made in writing on the books of such agency, unless the last precedent transfer has been made to bearer, in which event the bond shall become thereby transferable by delivery.

This bond shall continue, subject to successive registrations and transfers to bearer, as aforesaid, at the option of any holder thereof, in accordance with the above provisions.

No bond of this series shall be valid and obligatory unless the same is duly authenticated by a certificate endorsed on the back thereof, duly executed by the said trustee.

In witness whereof the said Chicago and Great Southern Railway Company has caused the foregoing to be attested by its president and secretary, and its corporate seal to be attached, this first day of November, A. D. one thousand eight hundred and eighty-one.

—— ——, *President.*
—— ——, *Secretary.*

With sixty coupons for the semi-annual interest to become due thereon, in the following form, to be attached thereto:

On the first day of July, 1882, the Chicago and Great Southern Railway Company will pay the bearer thirty dollars, in gold coin, at the Central Trust Company of New York, for six months' interest on its first-mortgage northern division bond.

No. —.

—— ——, *Secretary.*

Said coupons differing so as to express the form and time of payment of each, and having the secretary's signature engraved thereon. Such issue of bonds to be two thousand bonds of one thousand dollars each, being numbered from Nos. 1 to 2,000, both inclusive, and also bearing the following certificate, to be attested by the trustee, viz:

Trustee's Certificate.

I, John C. New, of Indianapolis, Indiana, trustee, hereby certify that this bond is one of a series, amounting in the aggregate to two million dollars, as mentioned in the within-described mortgage, which has been duly recorded in the several counties in which the northern division of said railroad is situate.

—— ——, *Trustee.*

Whereas it was further resolved by the said board of directors, at such meeting that, in order to secure the payment of the
1824 principal and interest of such issue of bonds, the said party of the first part should prepare, sign, seal, acknowledge, execute, and deliver, in due form of law, a deed of trust or mortgage unto some proper person, as trustee, conveying all the present and in future to be acquired northern division of railway, appurtenances, contract rights, equipment, coal lands, and income in trust and as security for the payment of such issue of bonds and coupons:

Now, therefore, under the power and authority aforesaid, and in order to secure the payment of the principal and interest of said issue of two million dollars of bonds, as aforesaid, and in consideration of the premises, and the further payment by the party of the second part unto the party of the first part of the sum of one dollar, the receipt of which is hereby acknowledged, The Chicago and Great Southern Railway Company has bargained, sold, granted, conveyed, and confirmed, and by these presents does grant, bargain, sell, convey, and confirm, unto John C. New, and to his successor or successors in trust, and for the uses and trusts hereby created—

All and singular the northern division of railway of the said party of the first part, as the same now is or may hereafter be constructed, between Brazil, Clay county, Indiana, extending thence northwardly through the counties of Clay, Parke, Fountain, Warren, Benton, Newton, and Jasper to a junction with the Louisville, New Albany and Chicago railway, at or northwest from Rensselaer, Indiana, being about one hundred miles in length, together with all and singular the rights of way, road-bed made or to be made, its track laid or to be laid, between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, turn-tables, machine-shops, buildings, erections, coal lands, and contract rights in any way now or hereafter appertaining, unto said described division of railroad, together with all the engines, cars, machinery, supplies, tools, and fixtures, now or at any time hereafter held, owned, or acquired by the said party of the first part, for use in connection with the division aforesaid, with all its depot grounds, yards, sidings, turn-outs, sheds, machine-shops, leasehold rights, and other terminal facilities now or hereafter owned or leased and enjoyed by the said party of the first part pertaining to said division, together with all and singular the powers and franchises thereto belonging, and the tolls, income, and revenue to be levied and derived therefrom:

To have and to hold the said granted premises unto the said party of the second part, and its successors forever, in trust nevertheless, and for the uses and purposes in this indenture expressed, that is to say:

First. If the interest due on any of the above-described issue of bonds, and hereby executed, shall not be paid by the party of the first part when the same becomes due, and shall so remain in arrears for six months after it is actually demanded at the place where the same is payable, as specified in the coupons given to evidence such interest, or in case the principal of said bonds, or any of them, shall

not be paid at their maturity, then it shall be lawful for the party of the second part, or his successors in said trust for the time being, and it shall be the duty of such trustee, upon the request in writing
1825 so to enter, of the holders of not less than one-half of the then outstanding bonds of the issue thereby secured, and upon receiving satisfactory indemnity for so doing, to forthwith demand, enter, take, and maintain possession of all and singular the railroad, premises, and franchises hereby conveyed, and as the attorney-in-fact or agent of said party of the first part by himself and agents, or substitutes duly constituted, have, use, manage, operate, and enjoy the same and each and every part thereof to as full an extent as the said party of the first part might lawfully do, and shall make from time to time all needful repairs, alterations, and additions thereto, and receive all the tolls, income, and revenue thereof, and after deducting the expenses of such use, operation, reasonable repairs, alterations, and additions, and the cost of taking possession, and fair compensation for the services of such trustee, for such taking possession and management while in possession, the said party of the second part, or his successor for the time being, shall apply the remaining revenue and income arising from the use of said mortgaged property, and coming to his hand, to the payment of the interest in default and maturing from time to time, satisfying the said coupons in the order of their several maturities, and thereafter applying the residue upon the principal of the then outstanding bonds.

Second. And upon the further trust that if a six months' default shall occur in the payment, either of principal or interest of any of the bonds hereby secured, after such actual demand as aforesaid, then it shall be lawful for said party of the second part, or said trustee for the time being, and upon the written request of the holders of a majority in amount of said bonds then outstanding, and upon receiving satisfactory indemnity as aforesaid, he shall, with or without entry, as aforesaid, cause all and singular the said premises, railway, appurtenances, equipment, and franchises hereby conveyed, to be sold as an entirety at public auction to the highest and best bidder, at the city of Chicago, Illinois, after giving at least sixty days' notice of the time, place, and terms of sale by advertisement in a newspaper of general circulation in the city of Chicago, and like advertisement in a newspaper of general circulation in the city of New York, and on such sale said party of the second part, or the trustee for the time being, shall make, execute, acknowledge, and deliver unto the purchaser or purchasers thereof, a good and sufficient deed in fee-simple, conveying the said railroad property and franchises so sold, which conveyance shall be a perpetual bar in law and equity against the said party of the first part, its successors and assigns, and all persons claiming or to claim under them of all right, title, interest, or claim of, in, or to the said premises, or franchises, or any part thereof.

The said party of the second part, after deducting from the proceeds of sale the costs and expenses thereof, and a reasonable compensation to said trustee and his attorneys and agents for services in

connection therewith, shall apply so much of the proceeds as may be necessary to the ratable payment of the principal and the then accrued interest of all the said bonds, whether the said principal be then due or not, and if any proceeds of such sale remain
1826 in his hands after the full payment of the principal and
accrued interest of all said bonds, then he shall render and pay over the same unto the party of the first part, or its successors or assigns:

Provided, however, That nothing hereinbefore contained shall in any way be construed to take away or interfere with the right of the party of the second part, after a six months' default in the payment of interest or principal of the bonds hereby secured, to proceed at his election to institute legal proceedings in any court of competent jurisdiction to foreclose this mortgage and procure a judicial sale of the property hereby conveyed.

Third. In case of any such taking possession or proceedings to sell the mortgaged premises for default of payment of interest, if the said party of the first part, before the said bonds shall become due and before such sale shall be made, shall pay and satisfy all interest then in arrears and all such outstanding bonds, and shall also pay and discharge all costs, expenses, and disbursements and reasonable compensation incurred by reason of such default or possession, then, upon evidence thereof to his satisfaction, the said party of the second part shall thereupon discontinue such proceeding and restore possession of the mortgaged premises to the party of the first part, to be thereafter held subject to these presents in like manner as if such default or entry had not occurred.

Fourth. The said party of the first part expressly covenants and agrees that it will, on demand, from time to time hereafter execute acknowledge, and deliver unto said party of the second part any and all such further and other conveyances and assignments as may be necessary and proper to fully convey to and vest in the party of the second part or trustee for the time being all such future acquired depot grounds, estate, equipment, and property as it may hereafter from time to time purchase for use in and upon the said northern division of said railroad which is intended to be hereby conveyed.

And the said party of the first part does still further agree that it will, in case of any default in the payment by it, either of the principal or interest of any of its bonds hereby secured, forthwith, upon demand of the party of the second part, or trustee for the time being, surrender the full and peaceable possession of all and singular the premises hereby conveyed, or intended to be, including all the real and personal property it acquired subsequent to the date of these presents, for use in connection with its said northern division of railroad, and will also surrender all books of account, records, and papers used by it in and about the operation thereof; and it further agrees that it will not, in case of any such demand, entry, or sale, make any resistance or delay thereto, or make any application for an injunction or other legal process to stay such entry or proceedings.

Fifth. It is specially agreed that all of the said bonds to be issued hereunder shall be upon an equality, so far as regards security for the payment thereof, by these presents, notwithstanding the same may be issued at different times, it being intended that this indenture shall operate as a security for all said bonds equally, ratably, and without preference, whether issued at the same or different times.

1827 Sixth. It is agreed that each of the bonds hereby secured shall pass by delivery or by transfer registered on the books of the party of the first, at its agency in the city of New York, and after a registration of ownership in such books, and duly certified on the back of any such bond by the transfer agent of the party of the first part, no transfer thereof shall be valid, unless made upon the said books, unless the last transfer has been to bearer, in which event such bond may continue to be transferable by delivery. Any such bonds shall continue subject to such successive registration and transfers to bearer at the option of the owner.

Seventh. This trust and the security hereby intended shall only extend to such bonds of this issue as shall be certified by said trustee to belong to said issue and to be secured by this mortgage, and when all said bonds and interest thereon shall be paid or discharged the trust hereby created shall cease, and the estate hereby granted to the party of the second part shall determine and become extinct, and the full right and title to the premises hereby conveyed shall revert in said party of the first part, without any further or other acknowledgement, satisfaction, reconveyance, re-entry, or other act.

And it is further agreed that until such default and demand as aforesaid the said party of the first part shall have the right to maintain, keep, and hold possession of all and singular the property and franchises hereby granted, manage the same, and enjoy the rents, income, and revenues thereof.

Eighth. It is mutually agreed that the said party of the second part, and his successor or successors in the trust hereby created shall only be accountable for reasonable diligence in mangement thereof, and shall not be responsible for the acts, omissions, or defaults of any agent employed by him or them, and that the said party of the second part, or any successor in said trust, shall be entitled to demand, receive, and retain proper compensation for every labor or service performed, and expense, damage, and disbursement incurred by him or them in the discharge of this trust in case of default or taking possession or sale of the premises, and that he or they shall not be liable in any manner for any loss or damage which may happen, unless the same be occasioned by his or their gross neglect or willful malfeasance.

In case the said trust shall become vacant by reason of the incapacity, removal, or resignation of the said party of the second part, or any successor, it shall be lawful for the holders of the majority in amount of the bonds then outstanding to appoint a successor by a writing by them signed, or for any court of record in any county through which said line of railroad runs to appoint such successor on the nomination in writing of not less than the holders of five hundred thousand dollars of said bonds then outstanding.

And upon such appointment being made, and the said trust being accepted, any such successor or substituted trustee shall, without further act or deed, become vested with all and singular the estate, rights, and powers, and shall perform all the duties of trustee in like manner and with the same effect as if it or he had been named in this instrument as trustee.

1828 In witness whereof the said Chicago and Great Southern Railway Company, by order of its board of directors, has hereto affixed its corporate seal and caused the same to be signed by its president and secretary, and the said trustee has hereto set his hand and its seal the day and year first above written.

THE CHICAGO AND GREAT SOUTHERN
RAILWAY COMPANY,
[SEAL.] By WILLIAM FOSTER, *President.*
JOHN C. NEW, *Trrustee.*

Attest: H. CRAWFORD, Jr., *Secretary.*

The president further reported to the board that a construction contract had been entered into between this company and Henry Crawford, providing for the acquisition by this corporation of the line of railroad known as the Chicago and Block Coal Railroad Company and the consolidation of the two properties and the construction of the lines of railroad, which said contract he reported to the board for its full confirmation.

Whereupon, it was, on motion,

Resolved, That the construction contract this day entered into between this company and Henry Crawford be in all things approved and confirmed, and that the secretary spread the said contract at large upon the records of this meeting.

Said contract, as confirmed, reads as follows:

Crawford's Construction Contract.

This agreement, made this eighteenth day of March, A. D. 1882, between Henry Crawford, of Chicago, Illinois, the party of the first part, and the Chicago and Great Southern Railway Company, a corporation organized under the laws of the State of Indiana, the party of the second part, witnesseth:

That for and in consideration of the payments and covenants of the party of the second part, as hereinafter set forth, the party of the first part hereby agrees to procure the right of way for and fully grade, bridge, construct and equip the northern division of the railway of the party of the second part, extending from a junction with the Louisville, New Albany and Chicago Railway Company about ten miles northwest from Rensselaer, or such point of junction as may be fixed on by the parties, and thence southwardly through the counties of Jasper, Newton, Benton, Warren, Fountain, Parke, and Clay, to Brazil, Indiana, in accordance with the terms and specifications hereafter set forth—that is to say, the said party of the first part agrees—

First. To procure a complete right of way of sufficient width over and upon the said entire route for the line of railway, and also sufficient and suitable grounds for sidings, depot, switch yards, turn-tables, water tanks, and other appendages ordinarily needed by a railway for its proper operation.

Second. That he will also in a proper and workmanlike manner grade and bridge the said railroad, lay down thereupon two 1829 thousand six hundred and forty ties to the mile, either of oak, hemlock, cedar, or other proper wood, and lay down thereupon either iron or steel rails, to be not less than fifty-two pounds to the lineal yard, and securely fasten the same by fish-plates, four bolts to each joint, and thoroughly spike down the rails over the entire length of line, and will also procure and put down all the necessary crossing frogs, turn-outs, switch stands, and appurtenances necessary to complete the line ready for business; all such graduation, bridging, track-laying, ties, and rails to be of good quality and construction, and the whole work to be done in a workmanlike and proper manner, and the road to be surfaced with a smooth and proper surface, and all necessary and proper road crossings, bridges, and cattle-guards to be placed along the line.

Third. The party of the first part will also erect all such necessary depots, water tanks, tool houses, turn-tables, and stock-pens as may be necessary and proper for the handling of such business as may be offered to the said line on its completion, and he will also put in proper sidings at convenient points, so as to enable the business of the line to be handled with economy and dispatch. Said party of the first part agrees also to purchase, pay for, and place upon the road a sufficient amount of engine and passenger and freight cars as to enable it to handle with reasonable promptness all the business that may be offered to it at such time as it is completed and opened for business, being such an amount of equipment as is usually placed upon roads of similar character upon completion.

Fourth. He will also erect upon the right of way alongside of the road a line of telegraph, and procure the same to be properly wired, and have an amount of instruments and batteries placed at proper stations on the road, so as to afford proper facilities for the handling of trains and traffic on the road.

The party of the first part agrees that the said work herein agreed to be done shall be begun with promptness and prosecuted with such diligence that the same shall be entirely completed by June 1, 1883, provided, however, that if by reason of injunctions or bad weather, floods, or unforseen circumstances, or the failure of contractors, the work of construction shall be delayed or temporarily prevented, then the party of the first part shall have the above contract time of completion sufficiently extended to meet and equalize any such unexpected delays.

In consideration of the above promises on the part of the party of the first part the said party of the second part hereby agrees as compensation and payment, and as an agreed price for such graduation, bridging, labor, material, right of way, and equipment, as aforesaid, to pay the said party of the first part—

First. All donations of stock, right of way, lands, labor, material, or money that have heretofore or may hereafter be at any time acquired by the party of the second part, or for its use or benefit.

Second. Also to pay and deliver to the party of the first part two million dollars of the full-paid non-assessable shares of the capital stock of the party of the second part.

1830 Third. Also to pay and deliver to the party of the first part the issue of two million dollars of its first-mortgage six per cent. gold bonds which are secured by the mortgage or trust deed, dated November 1, 1881, and executed to John C. New.

Fourth. Also to pay and deliver to the party of the first part two million dollars of the income bonds of the party of the second part, which shall bear not to exceed seven per cent. interest, payable annually, but which interest shall be payable exclusively out of the net earnings of said northern division, after payment of the interest on first-mortgage bonds, operating expenses, taxes, and proper renewals and repairs, but said interest shall be non-cumulative, such bonds to be secured by a trust deed, with proper covenants, to such trustee as may be agreed on between the parties.

It is further agreed that the payment of such stock, first-mortgage and income bonds are to be made to the party of the first part in proportion as the work of construction from time to time progresses, and the said party of the first part shall have the absolute right to demand and receive the full amount of fifteen thousand dollars in stock and the same amount in first-mortgage bonds and the same amount in income bonds for each and every mile of main track as fast as laid, and for all equipment as fast as placed on the road the party of the first part shall have the right to demand and receive the first-mortgage bonds aforesaid at the rate of sixty cents on the dollar to equal the full appraised value of such equipment as fixed by the engineer of the party of the second part, and also the same amount of income bonds and stock.

On the completion of the road or termination of this contract the party of the first part shall have the right to demand and receive any balance of stock and bonds that may remain at such time still undelivered to him out of total contract price.

It is further agreed that the party of the first part is to have the full possession and control of each and every part of said line of railroad and equipments and property, and receive and appropriate as his own all and singular the income and revenues of said railroad until the entire and full completion of the work or the termination of this contract, but such operation shall be at the risk and cost of the party of the first part.

It is further agreed that the said party of the second part shall, from time to time, on demand, and for the accommodation of the party of the first part, execute and deliver to the party of the first part its promissory note or acceptance to enable him to negotiate loans for the work of construction, or to evidence the purchase of material, right of way, equipment, or to pay for labor to be used in the work, but said notes or acceptances are always on maturity or renewal to be fully paid by the party of the first part and the railway company forever protected and saved harmless therefrom.

It is further agreed that if said company before the completion of said northern division decides to extend its line southwardly from Brazil, that in that case said party of the first part shall have the right to construct and equip such extension, and shall receive the same amount and character of payment and compensation as is 1821 herein beforeset out for each mile of main track, viz: $20,000 in full-paid stock for each mile of main track; $20,000 per mile in first mortgage six per cent. bonds, and $20,000 per mile in income bonds, and all the donations that the said party of the second part may procure upon the said southern division.

It is further agreed that if the said party of the first part, at his expense, procures the consolidation of the party of the second part with the Chicago and Block Coal Railroad Company, so as to thereby acquire, among other property, the completed railway of the said named corporation extending southwardly from Attica, that thereupon the party of the first part shall be allowed and paid upon the main line mileage of said constructed road so acquired the same amount of stock and first mortgage and income bonds and donations as though the said railroad so acquired had been actually constructed by the party of the first part under the terms of this contract.

If at any time during the progress of the work the party of the first part shall be unable to market the first-mortgage bonds hereby agreed to be paid as part compensation at such price as will net him seventy-five cents on the dollar, then the party of the first part shall be entitled at his option to stop all further work under this agreement, and declare the same to be terminated, and demand and receive from the party of the second part full payment and settlement in stock, bonds, and donations for all work and labor done and material and equipment and right of way furnished up to such notice and termination of this contract, such payment to be for full contract price per mile.

The treasurer reported to the board that for advances made and to be made by the contractor there had been delivered to him to be accounted for under such contract 1,000 bonds of $1,000 each, and also that said Crawford had transferred to this company a contract in writing for the sale of all the capital stock and assets of the Chicago and Block Coal Railroad Company.

On motion, the action in such matter was fully approved and confirmed.

Board adjourned.

H. CRAWFORD, Jr., *Secretary.*

Stockholders' Meeting, May 1, 1882.

GOODLAND, *May* 1, 1882.

In pursuance of the provisions of the by-laws and notice, the annual meeting of the stockholders of the Chicago and Great Southern

Railway Company was held on this day at 2 o'clock p. m., at the office of the company in Goodland.

It appearing that more than a majority of the outstanding stock of the company was present in person or by proxy, the meeting was duly organized by the election of Henry Crawford as president and F. F. Lacey as secretary of the meeting.

The stockholders then proceeded to ballot for nine (9) persons to serve as directors for the ensuing year, and the said election resulted in the choice of the following persons, viz: William A. Starin, 1832 D. H. Conklin, J. B. Forseman, Henry Crawford, Jr., Henry Moore, George W. McDonald, Henry Meiselbar, D. J. Lyon, and F. F. Lacey, each of whom received 1,205 votes, being more than a majority of all the outstanding stock of the corporation.

Whereupon the above-named nine persons were declared to have been duly elected directors of said corporation, to serve as such for one year and until their successors were elected and qualified.

The following preamble and resolution was thereupon presented for consideration:

Whereas the southern terminus of the railroad of this company is by its original articles of incorporation fixed at Attica, Fountain county, Indiana;

And whereas it is deemed very important to extend the line of railroad of this corporation in a southerly direction as far as the city of Brazil, in Clay county, Indiana, so as to gain a direct entrance into the "Block Coal Fields:"

Be it therefore resolved by the stockholders of the Chicago & Great Southern Railway Company (formerly the Indiana & Chicago Railway Company) and a majority in value of all the outstanding stock of the company concurring herein, that the line of the company's railroad be extended from Attica southward to the city of Brazil, Indiana, passing on such extension through the townships of Logan, Shawnee, Van Buren, and Mill Creek, in Fountain county, and Sugar Creek, Penn, Washington, Adams, and Raccoon, in Parke county, and Van Buren and Dick Johnson, in Clay county.

On motion, the above preamble and resolution was adopted by the affirmative vote of 1,205 shares, being more than a majority in value of the outstanding capital stock of the company.

There being no further business, the stockholders' meeting then adjourned.

H. CRAWFORD, Jr., *Secretary*.

GOODLAND, *May* 1, 1882.

At a regular meeting of the board of directors (this day elected), held at the company's offices in Goodland at 3 o'clock p. m., there were present William A. Starin, Henry Crawford, Jr., George W. McDonald, F. F. Lacey, H. Moore, and D. H. Conklin.

On motion, Wm. A. Starin was duly elected president and H. Crawford, Jr., was duly elected secretary and treasurer of the corporation.

No further business being presented, the board then adjourned.
H. CRAWFORD, Jr., *Secretary.*

Meeting of the board of directors at Chicago, June 29th, 1883. Resolutions passed changing the location of the road, and consolidating with the Chicago and Block Coal Railroad Company.

Meeting of stockholders at Attica, Indiana, March 10th, 1883, at which the resolutions of the directors for the consolidation with the Chicago and Block Coal Railroad Company and the articles of consolidation were ratified.

Meeting of board of directors held at Chicago, April 18, 1883. Resolution approving deed of further assurance to John C. New, trustee, as follows:

1833 *Deed of Further Assurance to New, Trustee.*

This indenture, made this 9th day of April, A. D. 1883, by and between the Chicago and Great Southern Railway Company, a corporation of the State of Indiana, formed by the consolidation of two certain railroad corporations of said State, known respectively as the Chicago and Great Southern Railway Company and the Chicago and Block Coal Railroad Company, party of the first part, and John C. New, of Indianapolis, Indiana, party of the second part, as trustee, witnesseth:

That whereas said former corporation known as the Chicago and Great Southern Railway Company did on the first day of November, 1881, sign, seal, execute, and deliver unto the said party of the second part its certain deed of trust or mortgage, whereby it conveyed unto the said party of the second part as trustee all and singular the northern division of its railway as the same then was or might thereafter be constructed between Brazil, Clay county, Indiana, and extending thence northwardly through the counties of Clay, Parke, Fountain, Warren, Benton, Newton, and Jasper to a junction with the Louisville, New Albany, and Chicago railway at or northwest from Rensselaer, Indiana, being about one hundred and twenty (120) miles in length, together with all and singular the rights of way, road-bed made or to be made, its tract laid or to be laid, between the terminals aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, turntables, machine-shops, buildings, erections, coal lands, and contract rights in any way now or hereafter appertaining unto said described division of railroad, together with all the engines, cars, machinery, supplies, tools, and fixtures then or at any time thereafter held, owned, or acquired by the said railway company, grantor, for use in connection with its division of railway, together with all depot grounds, yards, sidings, turn-outs, sheds, machine-shops, leasehold rights, and other terminal facilities then or thereafter owned or leased and enjoyed by the said grantor pertaining to said division, together with all and singular the powers and franchises thereto belonging, and the tolls, income, and revenue to be levied and derived therefrom.

The said deed of trust or mortgage being executed and delivered unto the said party of the second part as trustee to secure the payment of the principal and interest of a certain issue of bonds executed by the said railway company, grantor, and amounting in the aggregate to two million of dollars ($2,000,000), bearing interest at the rate of six per cent. per annum, payable semi-annually, both principal and interest being payable in gold coin of the United States, which said deed of trust or mortgage was shortly after its execution duly recorded in each of the counties through which the chartered line of said railway is situate; and

Whereas it was provided by the fourth specification of said deed of trust or mortgage so as aforesaid executed unto the said party of the second part as trustee, as follows:

1834 "That the said party of the first part expressly covenants and agrees that it will on demand from time to time hereafter execute, acknowledge, and deliver unto the said party of the second part any and all such further assurance and other conveyances and assignments as may be necessary and proper to fully convey to and vest in the party of the second part or the trustee for the time being all such further acquired depot grounds, estate, equipment, and property as it may hereafter from time to time purchase for use in and upon the said northern division of said railroad which is intended to be hereby conveyed;" and

Whereas the said Chicago and Great Southern Railway Company, being such mortgagor as aforesaid, by virtue of due and legal proceedings had by the board of directors and stockholders of both said corporations, did on the 10th day of March, 1883, become consolidated with the Chicago and Block Coal Railroad Company, which before the date last aforesaid was the owner in fee-simple and unincumbered of the line of railroad actually then constructed and in operation extending from Attica, Fountain county, Indiana, southwardly about twenty-two (22) miles to Yeddo, Indiana, and was also the like owner in fee simple and wholly unincumbered of the graded road-bed extending from Brazil, Clay county, Indiana, northwardly towards Rockville, Parke county, Indiana, for about the distance of seventeen (17) miles, which consolidated corporation was declared by the agreement between the two companies should be hereafter known and designated as the Chicago and Great Southern Railway Company, being the party of the first part herein, and which party of the first part is now by virtue of said consolidation the owner in fee-simple absolute of the said constructed and also partially completed line of railway as aforesaid; and

Whereas, in and by the sixth article of the said agreement for consolidation with the Chicago and Block Coal Railroad Company, it is provided as follows:

"All and singular the debts, contracts, and engagements of either of the parties hereto are hereby declared to be assumed and shall become the debts, contracts, and engagements of the consolidated corporation hereby created, and it is especially declared that the issue of two million dollars of bonds made by the party of the first part hereto, and secured by a mortgage or trust deed to John C. New, of Indianapolis, Indiana, and dated November first, 1881, as

the same now appears of record in the counties of Clay, Parke, Fountain, Warren, Benton, Newton, and Jasper, is fully assumed by the consolidated corporation, and the mortgage or trust deed recorded as aforesaid for the purpose of securing the payment of said bonds, and interest thereon, shall constitute the first lien upon all and singular the railroad of said consolidated corporation in said last-named counties from Brazil northwardly to the junction with the Louisville, New Albany, and Chicago Railway, also all the lands, equip-
ments, tools, income, property, and franchises as described in
1835 such trust deed, and it is expressly agreed between the parties
hereto, and it is hereby declared to be one of the conditions and trusts of this consolidation, that as soon as the said consolidated corporation comes into existence it will forthwith execute and deliver to said John C. New a proper deed of further assurance to carry into effect the true intent of this article and vest in said trustee a first lien upon the legal title to said entire line of railroad as aforesaid:"

Now, therefore, in consideration of the sum of one dollar to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, and to fully effectuate and carry out the trust of said consolidation as above recited, and by further and proper deed of assurance and effectuation of the trust of the original mortgage of November 1, A. D. 1881, the Chicago and Great Southern Railway Company, as party of the first part, being the corporation created in and by the said articles of consolidation, doth hereby bargain, sell, grant, convey, and confirm unto the said John C. New, and to his successor or successors in trust, and for the uses and trusts as expressly designated and recited in said original indenture of November 1, 1881, the following-described railroad property, appurtenances, income, and franchises, namely:

All and singular the northern division of the railway of the said party of the first part as the same now is or may hereafter be constructed between Brazil, Clay county, Indiana, extending thence northwardly through the counties of Clay, Parke, Fountain, Warren, Benton, Newton, and Jasper to a junction with the Louisville, New Albany and Chicago railway at or northwest from Rensselaer, Indiana, being about one hundred and twenty (120) miles in length, together with all and singular the rights of way, road-bed made or to be made, its track laid or to be laid, between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, sidings, engine-houses, turn-tables, buildings, erections, coal lands, and contract rights in any way now or hereafter appertaining unto said described division of railroad, together with all the engines, cars, machinery, supplies, tools, or fixtures now or at any time hereafter held, owned, or acquired by the said party of the first part for use in connection with its division aforesaid, with all depot grounds, yards, sidings, turn-outs, sheds, machine-shops, leasehold rights, and other terminal facilities now or hereafter owned or leased and enjoyed by the said party of the first part pertaining to said division, together with all and singular the powers and franchises thereto belonging, and the tolls, income, and revenue to be levied and derived therefrom:

To have and to hold the said granted premises, appurtenances, and franchises unto the said party of the second part and his successors forever in trust for the uses and purposes expressed and recited in the said original indenture of November first, 1881, executed as aforesaid to the said party of the second part, with all the rights, powers, and duties expressed in said original indenture, to be and remain in every respect unimpared, it being the true intent and meaning of this indenture to fully comply with the trusts of said consolidation agreement, and by proper deed of assurance to vest in said party of the second part as trustee under said original 1836 trust deed any and all title, claim, and equity which the party of the first part acquired to the said line of railroad and property formerly belonging to said Chicago and Block Coal Railroad Company, so as to constitute the said original conveyance or trust deed of November first, 1881, a valid first and paramount lien upon the entire line of railroad built or to be built from Brazil, Indiana, to the northern terminus of said division at the junction with the Louisville, New Albany and Chicago railway, and all the appurtenances, equipment, and franchises and income thereto pertaining.

In witness whereof the said Chicago and Great Southern Railway Company has hereto affixed its corporate seal, duly attested by its secretary, and caused the signature of its president to be hereto attached.

—— ——.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

Before me, the undersigned, a notary public in and for said State and county, personally came this day William A. Starin, president of the Chicago and Great Southern Railway Company, personally known to me to be the president of said company, and whose name is subscribed to the foregoing instrument, and acknowledged that he, in behalf of said railway company, had signed and delivered the said instrument as the free and voluntary act of the said railway company and himself, and for the uses and purposes therein set forth. Also personally appeared before me, at the same time, Henry Crawford, Jr., secretary of the said railway company, personally known to me to be the secretary of said railway company, and whose name is subscribed to the foregoing instrument and acknowledged that he, in behalf of said railway company, signed and affixed to the said instrument the official seal of said railway company as the free and voluntary act of the said Chicago and Great Southern Railway Company, for the uses and purposes therein set forth.

Witness my hand and official seal, at Chicago, Illinois, this — day of April, A. D. 1883.

—— ——.

Stockhodlers' Meeting, May 7, 1882.

GOODLAND, *May* 7, 1882.

Pursuant to due notice according to the statute and as regulated by article ten of the by-laws, the stockholders of the Chicago and Great Southern Railway Company assembled at the company's office on May 7, 1883, for the purpose of electing directors and transacting any other business.

Henry Crawford, as president of the corporation, took the chair to preside over the meeting, and F. F. Lacey was appointed secretary.

More than a majority of the outstanding stock of the company being represented, an election was held for nine (9) directors to serve as such for the ensuing year, and the following persons were declared elected: Henry Crawford, William A. Starin, J. B. Forseman, H. Crawford, Jr., George W. McDonald, Henry Moore, D. J. Lyon, Charles S. Worden, and F. F. Lacey, each having received 1,205 votes, being a majority of all the outstanding stock of the company.

No other business being presented, the meeting then adjourned.

HENRY CRAWFORD, *Chairman.*

1837 *Directors' Meeting, May* 7, 1883.

GOODLAND, *May* 7, 1883.

The regular meeting of the board of directors of this company for organization was held at the company's office in Goodland at 2 p. m.

There were present Henry Crawford, J. B. Forseman, H. Crawford, Jr., Charles S. Worden, and F. F. Lacey, being a majority of the board.

The following officers were elected, viz: Henry Crawford was elected president and F. F. Lacey was elected secretary. The meeting then adjourned.

GOODLAND, *August* 11, 1883.

Pursuant to notice, the board of directors convened at the office of the company at one o'clock p. m.

The following directors were present: Henry Crawford, John B. Forsman, H. Crawford, Jr., Charles S. Worden, and George W. McDonald.

The president presented to the board the resignation of William A. Starin as vice-president and as a member of the board of directors, which resignation was, on motion, duly accepted, and Mr. E. Moore, Jr., was elected as director in his stead.

The president reported to the board that he had concluded a contract in writing between this company and the Western Union Telegraph Company for the construction and operation of a line of telegraph along the road of this company, and the original of such contract he presented to the board for its action, and, the same having been read and considered, it was—

Resolved, "That the contract dated between the Chicago and Great Southern Railway Company and the Western Union Telegraph Company, making provision for the construction, repair, maintenance, and operation of a line of telegraph upon and along the line of railroad of this company be, and the same is hereby, in all things ratified, approved, and confirmed as the act and agreement of this company."

It being explained that it was necessary, in order to comply with the regulations of the Post Office Department, to appoint an agent to receive and receipt for all dues for postal service, it was therefore unanimously—

Resolved, "That Henry Crawford, Jr., be, and he is hereby, appointed agent of the Chicago and Great Southern Railway Company to receive and receipt for all money due said company for the transportation of the United States mails over the said Chicago and Great Southern railway."

On motion, the meeting adjourned.

F. F. LACEY, *Secretary*.

Letter of Crawford to Directors.

Chicago and Great Southern Railway Company, general office 115 Monroe street. Henry Crawford, president.

CHICAGO, *February* 18, 1884.

1838 To the board of directors of the Chicago and Great Southern Railway Company:

As contractor having charge of the construction of the road, I have to report that the division of the line from Fair Oaks Junction to Yeddo has been completed, and is now about ready for business. A line of telegraph has been erected, and instruments are in place at the important points. Suitable station-buildings, section-houses, tool-sheds, stock-pens and side tracks have been constructed. Very costly combination bridges of wood and iron have been erected across the Wabash river and Pine creek. Although by the contract iron rails of fifty-two pounds weight to the yard were to be used, I have used mainly steel rails weighing fifty-six and sixty pounds, and have ballasted much of the road with excellent gravel and sand.

I think in every respect the work done is much in excess of my obligations under the contract. From Yeddo southwardly to Brazil the line has been relocated to the north of the old grade, and nearly the whole right of way has been obtained. From Brazil north about fourteen miles the old grade with some dressing up will be readily prepared for track-laying.

The contractor has to report that he has been much delayed in completing the work on account of the failure of sub-contractors to complete the work in accordance with their agreements, as also by injunctions and high water. Last year the Wabash flood destroyed some of the masonry and subjected me to large expense and great delay.

I also regret to say that about $34,000 of donations, which had been voted in two townships in Fountain county, have been repudiated on technical grounds, although the enterprise had confidently relied upon the payment of this aid to liquidate a portion of the heavy work in their locality.

The contract authorizes the contractor whenever the first-mortgage bonds are not salable at seventy-five cents to stop the work. Although that has been the situation of the securities for over a year, I have thought it best to proceed with the work, relying upon my own means and credit, and await better chances of negotiating the bonds.

I desire the company, in consideration of the foregoing, to direct the secretary to indorse an extension of the contract up to June 1, 1885, and to issue me, in addition to the $1,000,000 first-mortgage bonds, a further sum of $200,000 first-mortgage bonds, and also $1,200,000 income bonds and $1,200,000 of the stock, the same to be a payment on account to me.

Yours, etc., HENRY CRAWFORD, *Contractor.*

Directors' Meeting, February 18, 1884.

CHICAGO, *February* 18, 1884.

The board of directors of the company met for the transaction of business at the office of the company in Chicago on February 18, 1884, in pursuance of due notice.

There were present H. Crawford, Jr., E. Moore, Jr., Charles S. Worden, G. W. McDonald, and F. F. Lacey.

The president being absent, G. W. McDonald was called on to preside, and thereupon took the chair.

1839 The secretary presented for the consideration of the board a written communication from the contractor reporting the completion of the road from Fair Oaks Junction to Yeddo, which was considered and ordered to be placed on file.

The same having been duly considered, it was—

Resolved, That the time for completing the line of road to Brazil *to* be extended unto June 1, 1885, and the secretary is hereby instructed to properly endorse such agreement of extension upon the construction contract, and to sign the same in behalf of this company.

Resolved, also, That as a payment on account for the work done and material furnished up to the present time under such construction contract, there be allowed and paid to the contractor or order the sum of two hundred thousand dollars of first-mortgage bonds (in addition to the one million dollars heretofore appropriated), and also ($1,200,000) one million two hundred thousand dollars of income bonds, and ($1,200,000) one million two hundred thousand dollars in the common stock, full paid, of this company, the proper officers of the company to execute the foregoing resolutions and take the proper vouchers for all payments.

Board then adjourned.

F. F. LACEY, *Secretary.*

Stockholders' Meeting, May 5, 1884.

GOODLAND, *May* 5, 1884.

In accordance with the provisions of the statutes of the State of Indiana and due notice according to law, the stockholders of the

Chicago and Great Southern Railway Company assembled in annual meeting at the office of the company in Goodland at 10 o'clock a. m. for the election of officers and the transaction of business.

The president of the company, in accordance with the by-laws, presided over the meeting, and F. F. Lacy was appointed secretary.

. An election fcr nine directors was then held, and Henry Crawford, H. Crawford, Jr., J. B. Forseman, E. Moore, Jr., G. W. McDonald, C. S. Worden, F. F. Lacy, H. Moore, and D. H. Conklin were duly elected as directors, to serve as such for one year and until their successors are duly qualified, each of said persons having received 1,205 votes, being a majority of all the outstanding stock of the company.

No other business being presented, the meeting was adjourned.

H. CRAWFORD, *Chairman.*

Directors' Meeting, May 5, 1884.

GOODLAND, *May* 5, 1884.

The board of directors this day elected by the stockholders duly met at 11 o'clock a. m. at the office of the company in Goodland. The following directors were present, viz.: Henry Crawford, H. Crawford, Jr., G. W. McDonald, C. S. Worden, and F. F. Lacey.

1840 On motion, Henry Crawford was elected president and F. F. Lacey secretary.

On motion, the following resolutions were adopted:

Resolved, That upon the surrender by the contractor of all outstanding stock certificates issued by the Indiana & Chicago Railway Company and the Chicago & Block Coal Railroad Company the secretary shall issue and deliver certificates of stock in the present consolidated company for a like amount of stock as represented by such surrendered certificates.

Resolved further, That, in addition to the new stock to be issued in exchange for the stock of the original companies, the secretary shall also issue and deliver to the contractor additional new stock as payment under the construction contract, so as to make [a] total of $1,200,000 par value of all stock outstanding.

Meeting then adjourned.

F. F. LACEY, *Secretary.*

Directors' Meeting, March 31, 1885.

MARCH 31, 1885.

A meeting of the board of directors of the Chicago and Great Southern Railway Company was held at room 36, Portland Block, Chicago, on Tuesday, March 31, 1885, at eleven o'clock a. m., in pursuance of the following notice, which was sent to each member of the board, by mail, March 25, 1885:

"CHICAGO, *March 25th*, 1885.

"DEAR SIR: You are hereby notified that a meeting of the board of directors of the Chicago and Great Southern Railway Company will be held at room 36, Portland Block, Chicago, Illinois, on Tuesday, March 31st, 1885, at eleven o'clock a. m., for the purpose of calling the annual meeting of the stockholders of the company and for the transaction of such other business as may come before the meeting.

"Yours truly, F. F. LACEY, *Secretary.*"

There were present D. H. Conklin, Henry Moore, G. W. McDonald, C. S. Worden, [and] F. F. Lacey, being a quorum of the board.

Mr. G. W. McDonald presented the following resolution, which was seconded by F. F. Lacey and unanimously adopted, to wit:

Resolved, That the annual meeting of the Chicago and Great Southern Railway Company be held at Fair Oaks, Jasper county, Indiana, at the depot of the Chicago and Great Southern railway, on the 4th day of May, A. D. 1885, at the hour of 12 o'clock m., for the purpose of electing a board of directors, and for the transaction of such other business as may come before the meeting.

And further resolved, That C. W. Hillard, Marvin A. Farr, and Henry A. Gardner be, and hereby are, appointed judges of the election at said meeting of said stockholders to receive and count the votes at said election for directors; also to declare the vote and notify the persons then found to be elected directors of said company, and to deliver to each of them the certificate of their election, as required by law.

And further resolved, That the said secretary of the board
1841 be, and hereby is, authorized and directed to give the proper
notices of said meeting by publication and otherwise in the
names of the directors of this company.

No other business being presented, the meeting adjourned.

F. F. LACEY, *Secretary.*

Stockholders' Meeting, May 4, 1885.

FAIR OAKS, INDIANA, *May* 4, 1885.

A meeting of the stockholders of the Chicago and Great Southern Railway Company was held at the depot of said company in Fair Oaks, Indiana, on Monday, May 4, 1885, at 12 o'clock m., pursuant to the following notice published as required by law:

"Chicago and Great Southern Railway Company, office of the secretary, room 37, Portland Block.

"CHICAGO, ILL., *April* 6, 1885.

"Notice is hereby given that the annual meeting of the stockholders of the Chicago and Great Southern Railway Company will be held at Fair Oaks, Jasper county, Indiana, at the depot of the Chicago and Great Southern Railway Company, on Monday, the 4th day of May, 1885, at the hour of 12 o'clock m., for the election of a board of directors to serve for the ensuing year, and for the transaction of such other business as may come before the meeting.

"By order of the board of directors.

"F. F. LACEY, *Secretary.*"

Upon motion, unanimously adopted, James W. Ferry was elected chairman, and F. F. Lacey was elected secretary of the meeting.

Upon motion, the minutes of the meeting of the board of directors held March 31, 1885, were read to show the call for the meeting of stockholders and appointment of C. W. Hillard, Marvin A. Farr, and Henry A. Gardner as judges of election, and the same were unanimously approved.

The list of the stockholders of the company as they appear on its records April 24, 1885, duly certified by the secretary of the company, was then read.

Upon motion, the meeting then proceeded to the election of a board of directors for the ensuing year.

All present and entitled to vote having cast their ballots, on motion, the polls were duly declared closed.

The judges of election thereupon submitted the following report:

“ *Report of Election held by the Stockholders of the Chicago and Great Southern Railway Company on Monday, May* 4, 1885.

“ The undersigned, judges of election, duly appointed according to law for the election of a board of directors at a stockholders' meeting of the Chicago and Great Southern Railway Company held May 4, 1885, submit the following report of said election:

“ The total number of votes cast was 12,000, of which 96 were cast in person and 11,904 by proxy.

“ The votes were cast for the persons named below:

	Votes.
“ George C. Kimball	12,000
“ E. F. Lawrence	12,000
“ Marvin A. Farr	12,000
1842 “ Henry A. Gardner	12,000
“ Walter F. Cobb	12,000
“ J. W. Ferry	12,000
“ R. D. McFadon	12,000
“ H. T. Story	12,000
“ C. W. Hillard	12,000

“And we find that the following-named persons, viz., George C. Kimball, E. F. Lawrence, Marvin A. Farr, Henry A. Gardner, Walter F. Cobb, J. W. Ferry, R. D. McFadon, H. T. Story, and C. W. Hillard, received all the votes cast, and we accordingly declare them elected directors of the Chicago and Great Southern Railway Company for the ensuing year.

“ C. W. HILLARD,
“ MARVIN A. FARR,
“ HENRY A. GARDNER,
“ *Judges of Election.*”

Upon motion, the proceedings of the meeting of the stockholders of this company held May 7, 1883, and May 5, 1884, and the proceedings of its board of directors at their meetings held on May 7 and August 11, 1883, and February 18 and May 5, 1884, as the same appear on the record-book of the company, were then read, and the following resolution was adopted by a stock vote, 12,000 votes being cast in favor of said resolution and none against.

Resolved, That the proceedings of the stockholders of this company at the meetings held May 7, 1883, and May 5, 1884, and the proceedings of its board of directors at the meetings held May 7 and August 11, 1883, and February 18 and May 5, 1884, are hereby approved, ratified, and adopted.

On motion, the meeting adjourned.

F. F. LACEY, *Secretary.*

Directors' Meeting, May 11, 1885.

MAY 11, 1885.

A meeting of the directors of the Chicago and Great Southern Railway Company was held at room 36, Portland Block, Chicago, Illinois, on May 11, 1885, at 11 o'clock, a. m., in pursuance of a notice duly given to each director, of which notice the following is a copy:

"CHICAGO, *May 6th*, 1885.

"To ——:

"You are hereby notified that a meeting of the board of directors of the Chicago and Great Southern Railway Company will be held at office, 36 Portland Block, Chicago, Ill., on Monday, May 11th, 1885, at 11 o'clock a. m., for the purpose of electing officers of the company, and for the transaction of such other business as may come before the meeting.

"C. W. HILLARD,
"HENRY A. GARDNER,
"MARVIN A. FARR,
"*Judges of Election.*"

There were present E. F. Lawrence, Marvin A. Farr, Henry A. Gardner, Walter F. Cobb, J. W. Ferry, R. D. McFadon, H. T. Story, C. W. Hillard, being a quorum of the board.

1843 Mr. J. W. Ferry was nominated and duly elected for chairman of the meeting.

Mr. W. F. Cobb was nominated and duly elected as secretary.

On motion of Mr. Hillard, the board proceeded to the election of officers of the company by ballot.

The ballots having been counted, the result was announced by the chairman as follows:

President, E. F. Lawrence; vice-president, J. W. Ferry; secretary, Walter F. Cobb; treasurer, Walter F. Cobb; executive committee, M. A. Farr, D. W. Hilliard—each person receiving the entire vote cast.

On motion of Mr. Hillard, seconded by Mr. Cobb, it was proposed and unanimously—

Resolved, That Mr. Henry A. Gardner be, and is hereby, appointed attorney of the company.

On motion, adjourned.

WALTER F. COBB, *Secretary.*

Exhibit F. John Gray, special commissioner.

Letter of Meiselbar Resigning as Director of Chicago and Great Southern.

Chicago, *June* 4, 1883.

H. Crawford, Esq., pres't C. & G. S. R'y Co.

Dear Sir: I hereby tender my resignation as director of the Chicago & Great Southern R. R. Co., and hereby notify you that I disaffirm and repudiate all and singular my acts and doings as such, on the ground that I have never, either directly or indirectly, received any consideration, either pecuniary or otherwise, for the original stock subscription, as evidenced by the articles of association. Neither has any stock been issued or tendered or any consideration paid by me, as there was an understanding at the time of the subscription by all subscribers that they would never be called upon to pay any assessment thereon whatever and that such subscriptions were merely colorable.

Wherefore I hereby request and demand that such stock subscription be rescinded and canceled as against me, by order of the board of directors, upon your request.

Please advise that this has been done accordingly, and oblige—

Yours respectfully, H. MEISELBAR.

Letter of H. Meiselbar Resigning as Director of Chicago and Dyer Railroad Company.

June 4, 1883.

H. Crawford, Esq.

Dear Sir: I desire to advise you that I have this day notified Asa B. Kile, as pres't of the Chicago & Dyer R. R. Co., that I requested of him to notify the board of directors of such Co. that I tender my resignation as sec'ty of said Co. and director, and I likewise repudiate and disaffirm all and singular my connection in any way with said Co., on the ground that my subscription to the capital stock thereof was made under duress, without consideration, and in fraud of the sovereignty of
1844 the people of the State of Illinois; that the same was simply
colorable and in evasion of the law of Illinois; that there was a tacit understanding at the time of such subscription between all subscribers that the board of directors' would never call upon them to pay any amount thereon, neither has such call been ever had; that such corporation had never for a single moment any corporate or legal existence, and if it had, its powers and franchises have ceased to exist. I requested him further that he should submit to said board my demand that such subscription be considered canceled and rescinded by me. I do so advise you out of courtesy to yourself.

Yours, H. MEISELBAR.

P. S.—I shall take similar steps in the C. & I. A. L. R. Co. by advising Judge Kent as president. H. M.

COMPLAINANT'S EXHIBIT 1.

Certificate of John C. New, Trustee, and Consent of Dull and Drexel, Morgan & Co.

John Gray, special commissioner:

I, John C. New, of the city of Indianapolis, in the State of Indiana, do hereby make known that as trustee in certain mortgage or deed of trust, bearing date the 1st day of November, 1881, made and executed by the Chicago and Great Southern Railway Company, a corporation of the State of Indiana, to me as trustee, covering the railroad and other property of said company to secure a certain issue of first-mortgage bonds of said company aggregating the sum of two millions of dollars, I have as such trustee certified for issue one thousand of said bonds, of one thousand dollars each and no more, and at the request of Henry Crawford, Esq., of Chicago, I agree that I will as such trustee certify no more of said bonds without the consent in writing of A. J. Dull, Esq., of Harrisburg, Pa.

Dated at New York, January 27th, 1882.

JNO. C. NEW, *Trustee.*

John C. New, trustee:

I hereby consent to the issue and certification of the remaining $1,000,000 of Chicago & Great Southern railway bonds whenever you are so requested to do by Drexel, Morgan & Co.

New York, Jan. 5, 1883.

A. J. DULL.

John C. New, Esq., trustee:

$200,000 of the above-named $1,000,000 of Chicago & Great Southern railway bonds having been certified in August last, there now remain uncertified $800,000 of the same, to the issue and certification of which we consent, whenever you are so requested to do by Mr. H. H. Porter, of Chicago.

New York, January 14th, 1885.

DREXEL, MORGAN & CO.

1845 COMPLAINANT'S EXHIBIT 3. John Gray, special commissioner.

Contract between Crawford and Drexel, Morgan & Co., by which the Bonds and Stock Were Pledged.

This agreement between Henry Crawford, of the one part, and Drexel, Morgan & Co., of the other part, witnesseth:

First. That Drexel, Morgan & Co. are to advance to Henry Crawford the sum of four hundred thousand dollars in manner following: $250,000 forthwith; $50,000 when the railroad track is continuously laid upon the road-bed of the Chicago & Great Southern R. R. from Iroquois river to Fair Oaks Junction, on the Louisville, New Albany & Chicago R. R.; $50,000 when the track is laid on the road-bed of the Chicago & Great Southern R. R. from Oxford, 8 miles south of Oxford, and when Henry Crawford shall have furnished Drexel, Morgan & Co. satisfactory evidence that he has expended upon the road-bed and track of the Chicago & Great Southern R. R. $50,000 in money, in addition to what has been already expended, and also in addition to the amounts advanced by Drexel, Morgan & Co. The $50,000 so to be expended by Henry Crawford shall be expended on the road between Oxford and Attica, and the $50,000 balance of the $400,000 shall be paid when the track and road-bed are complete from Yeddo, in Fountain county, to the junction of the Chicago & Great Southern Railway Co. with the Louisville, New Albany & Chicago R. R. in Jasper county, in the State of Indiana, the advance being an advance of $5,000 per mile of completed road.

Second. In consideration of the above loan Henry Crawford agrees to give to Drexel, Morgan & Co. his notes for the amounts agreed to be advanced when and as the advances are made to him. The notes are severally to bear date the day of the first advance, and are to mature in six months from that date. They are to bear interest at the rate of 6% per annum, and are to be payable at the office of Drexel, Morgan & Co. in New York. Interest is only to be computed from the date of the advances respectively.

Third. Henry Crawford shall forthwith deposit with Drexel, Morgan & Co., as collateral security for the loan of $400,000, the entire capital stock of the Chicago & Block Coal R. R. Co., amounting to $800,000 at the par thereof, and Drexel, Morgan & Co. shall pay out of the $250,000 to be first advanced the amount due to Henry McCormick and his associates under the contract between him and Henry Crawford, dated April 27th, 1881, estimated not to exceed $132,000, receiving from said McCormick the said stock properly transferred and also an assignment of said contract. Henry Crawford shall also assign to Drexel, Morgan & Co. all the capital stock of the Chicago & Great Southern Railway Co. now issued, amounting at the par thereof to $60,250, and when and as any further amount of stock is authorized to be issued it shall, in like manner, be transferred to Drexel, Morgan & Co. Henry Crawford shall, in like manner, deliver to Drexel, Morgan & Co. one million dollars
1846 of the first-mortgage bonds of the Chicago & Great Southern
R'y Co. secured by the mortgage to John C. New, dated November 1st, 1881, and shall place the remaining one million of dollars of bonds secured by said mortgage in the custody of Drexel, Morgan & Co., not to be issued, except with the consent of Drexel, Morgan & Co., until the whole of the loan of $400,000 has been fully repaid by Henry Crawford to Drexel, Morgan & Co., it being agreed and intended hereby that no bonds shall be issued under said mortgage, except the $1,000,000 delivered to Drexel, Morgan & Co. as collateral, until said loan is paid off.

Fourth. Henry Crawford shall give for said loan his notes, with the usual clauses in the notes expressing the collaterals given as security for them, and also expressing the power of sale in case of default.

Fifth. Drexel, Morgan & Company shall appoint an agent to superintend the expenditure of all the money so to be loaned or advanced, except the amount to be paid to Henry McCormick, and the money shall only be drawn upon drafts of Henry Crawford, approved and countersigned by such agent.

Sixth. Henry Crawford shall, without delay, and at his own expense, proceed to effect a consolidation between the Chicago & Block Coal Railroad Company and the Chicago and Great Southern Railway Company, and to procure from the consolidated company such further assurance in the law as will render the whole line of railway from Brazil to Fair Oaks Junction subject to the lien of the mortgage to John C. New as a first incumbrance thereon. The consolidation and conveyances for above purposes shall be made satisfactory to the counsel of Drexel, Morgan & Co.

Seventh. Henry Crawford hereby covenants that he has control of the Chicago & Great Southern Railway Co., and of its capital stock and of the bonds secured by the mortgage to John C. New, and that upon the payment being made to Henry McCormick as above stated, the whole control of the Chicago & Block Coal railroad will pass into the hands of Drexel, Morgan & Co., and that he will be able to perfect the consolidation and the lien of the said mortgage upon the line of road as above stipulated.

Eighth. Henry Crawford further covenants and binds himself to obtain and perfect the title to all rights of way and station lots, and to remove all judgments or liens therefrom other than the said mortgage to John C. New.

Ninth. In case Henry Crawford should fail to pay the said notes or any of them at maturity, Drexel, Morgan & Co. shall have the right to sell, assign, and deliver the whole or any part of the collateral securities above-mentioned, or any substitutes therefor or additions thereto, at any brokers' board, or at public or private sale, at their option, at any time or times thereafter without advertisement or notice to Henry Crawford, and with the right on their part to become purchasers thereof at such sale or sales, freed and discharged
of any equity of redemption; and, after deducting all legal or
1847 other costs and expenses for collection, sale, and delivery, to
apply the residue of the proceeds of such sale or sales so made
to pay any, either, or all of said loans as said Drexel, Morgan & Co. shall deem proper, returning the overplus, if any, to Henry Crawford, who will still remain liable for any amount so unpaid.

New York, January 5, 1883.

HENRY CRAWFORD.
DREXEL, MORGAN & CO.

Promissory Note of Crawford to Drexel, Morgan & Co.

(NOTE.—There were three other notes of the same tenor executed and due at the same time, one for $50,000 and two for $100,000 each; also one for $50,000, dated August 13, 1883, and due on demand, and of the same tenor in other respects, making in all $350,000.)

(5 Notes.)

COMPLAINANT'S EXHIBIT 7. John Gray, special commissioner.

$50,000.00. NEW YORK, *January 5th*, 1883.

Six months after date, for value received, I promise to pay to Drexel, Morgan & Co., or order, fifty thousand dollars, with interest from Ap'l 27, 1883, at six per cent. per annum, having deposited with them as collateral security for payment of this or any other liability or liabilities of mine to said Drexel, Morgan & Co., due or to become due, or that may be hereafter contracted, property, as stated in my agreement with them of this date, the market value of which is now $—, with the right on the part of Drexel, Morgan & Co., from time to time, to demand such additional collateral security as they may deem sufficient should the market value thereof decline, and upon my failure to comply with any such demand this obligation shall forthwith become due, with full power and authority to them or their assigns, in case of such default or of the non-payment of any of the liabilities above mentioned at maturity, to sell, assign, and deliver the whole or any part of such securities, or any substitutes therefor or additions thereto, at any brokers' board or at public or private sale, at their option, at any time or times thereafter, without advertisement or notice to me, and with the right on their part to become purchasers thereof at such sale or sales, freed and discharged of any equity of redemption; and, after deducting all legal or other costs and expenses for collection, sale, and delivery, to apply the residue of the proceeds of such sale or sales so made to pay any, either, or all of said liabilities as said Drexel, Morgan & Co. shall deem proper, returning the overplus to the undersigned, and I will still remain liable for any amount so unpaid.

Due July 8, 1883.

HENRY CRAWFORD.

1848 COMPLAINANT'S EXHIBIT 6. John Gray, special commissioner.

Letter of Drexel, Morgan & Co. to Crawford, of May 9, 1884.

NEW YORK, *May* 9, 1884.

Henry Crawford, Esq., care of Chicago and Great Southern Railway Company, Chicago.

DEAR SIR: On April 30th last we wrote you requesting payment of your notes held by us, as follows:

Dated	January 5, 1883,	for	$100,000,	payable six months after date.
"	" " "	"	100,000,	" " " " "
"	" " "	"	50,000,	" " " " "
"	" " "	"	50,000,	" " " " "
"	August 13,	"	50,000,	payable on demand.
	Total		$350,000	

with interest at the rate of six per cent. per annum.

114—1280

You have paid no attention to our request. We now give you notice that unless these notes, with accrued interest, be paid by you to us before Monday, the 2d day of June, 1884, we will on that day, at twelve o'clock noon, offer for sale at the Exchange salesroom, No. 111 Broadway, in this city, and sell for the best price which can be obtained the following securities:

1,000 bonds of $1,000 each, Chicago and Great Southern Railway Company's northern division first mortgage; total	$1,000,000
1,205 shares of $50 each, Indiana and Chicago Railway Company's stock; total	69,250
8,648 shares of $50 each, Chicago and Block Coal Railroad Company's stock; total	432,400

which we hold as collaterals for payment of your said notes.

Yours, very truly,

DREXEL, MORGAN & CO.

COMPLAINANT'S EXHIBIT, No. 9. John Gray, special commissioner.

Contract Between Crawford and Drexel, Morgan & Co., June 25th, 1884.

Memorandum of agreement made this 25th day of June, A. D. 1884, between Henry Crawford of the one part and Drexel, Morgan & Company of the other part.

Whereas default has been made by the said Crawford in the repayment of the amounts advanced to him by Drexel, Morgan & Co., under the agreement of January 5th, 1883, and at his request Drexel, Morgan & Co. have delayed from time to time to sell and dispose of the collaterals pledged for the repayment of said advances; and

Whereas the said Crawford has requested them to accept the offer of Samuel M. Nickerson and H. H. Porter for the purchase of said collaterals, which proposition is made conditional upon the giving of certain additional shares and bonds of the Chicago and Great Southern Railroad Company as therein stated,

Now this agreement witnesseth:

First. The said Crawford will procure or cause to be issued all the shares of the capital stock of the Chicago & Great Southern railroad which may be lawfully issued, either in lieu of the shares of the Indiana & Chicago Railway Company and the Chicago & Block Coal Railroad Company now held by the said Drexel, Morgan & Co. as collateral or for other purposes, amounting at the par thereof to at least twelve hundred thousand dollars; and the said
1849 Crawford will also cause or procure to be issued the remainder of the first-mortgage bonds of the Chicago & Great Southern Railroad Company, in addition to those now held by said Drexel, Morgan & Co., which can be lawfully issued, amounting to $1,000,000, secured by the mortgage to John C. New, dated November 1st, 1881, and will assign, transfer, and set over to the said Drexel, Morgan & Co. the said $1,000,000 of mortgage bonds and all the said shares, whether issued in lieu of shares now held by the said Drexel, Morgan & Co. or for other purposes, to be held by the

said Drexel, Morgan & Co. as collateral to the said indebtedness of the said Crawford, under and subject to the same power of sale as the securities originally pledged are now held.

Second. The said Crawford further agrees that the said Drexel, Morgan & Co. may accept the proposition of the said Samuel M. Nickerson and H. H. Porter for the purchase of the said securities, and that unless the indebtedness of the said Crawford, with interest and expenses thereon, shall have been paid and discharged in full, within a period of sixty days from June 20th, 1884, they may, at the expiration of said period, sell, assign, transfer, and deliver the said securities to the said Nickerson and Porter for an amount equal to his said indebtedness, with interest and expenses, without further notice to him.

Third. In consideration of the foregoing agreement, and of the delivery to them of the said shares of the capital stock and the said mortgage bonds of the Chicago & Great Southern Railroad Company, the said Drexel, Morgan & Co. agree to accept the said proposition of the said Nickerson and Porter, and, unless the said indebtedness of the said Crawford be sooner paid, to sell the said securities to the said Nickerson and Porter for an amount
1850 equal to the said indebtedness, with interest and expenses
payable in cash, or to accept satisfactory surety for such payment with interest, on or before the 15th day of January, 1885.

In witness whereof the parties hereto have hereunto set their hands the day and the year first above written.

DREXEL, MORGAN & CO.

Contract of June 25, 1884, of Porter and Nickerson with Drexel Morgan & Co.

Memorandum of agreement made and entered into this 25th day of June, A. D. 1884, by and between Drexel, Morgan & Co., of the first part, and Samuel M. Nickerson and H. H. Porter, of the second part.

Whereas Drexel, Morgan & Co. hold certain securities as collateral to the indebtedness of Henry Crawford, and the said Henry Crawford has agreed to cause or procure to be issued all the shares of the capital stock of the Chicago & Great Southern Railroad Company that can be lawfully issued, amounting, at the par thereof, to at least $1,200,000, and all the bonds that can now be lawfully issued under the first mortgage of the said Chicago and Great Southern Railroad Company, dated November 1st, 1881, to John C. New, in addition to those now outstanding, amounting to $1,000,000, and to transfer and deliver to the said Drexel, Morgan & Co. all the said shares and bonds in exchange for the shares of the Indiana & Chicago Railroad Company stock and Chicago & Block Coal R. R. Co. stock now held by them as additional collateral for his said indebtedness, and has authorized and empowered said Drexel, Morgan & Co. to make the sale of all their securities in their hands to the said Nickerson and Porter upon the terms herein set forth:

Now this agreement witnesseth:

First. The said Drexel, Morgan & Co. have agreed that in case said indebtedness, with interest and expenses thereon, remains unpaid at the end of sixty days from June 20th, 1884, they will bargain, sell, assign, transfer, and set over to the said Nickerson and to the said Porter all the shares and bonds then held by them as collateral security for the payment of the indebtedness of the said Crawford, including therein when received the shares and bonds of the Chicago & Great Southern Railroad Company, which the said Crawford has agreed to procure to be issued and transferred for an amount equal to the indebtedness due to them by the said Crawford, including interest and other expenses resulting from his default or growing out of the said transaction, the said indebtedness being for an original principal sum of $350,000, to which it is roughly estimated that a sum of about $30,000 must be added to cover interest and other expenses.

Second. The said Nickerson and the said Porter hereby jointly and severally agree, in consideration thereof, to purchase the securities as above, in case the indebtedness of the said Crawford shall remain unpaid at the end of sixty (60) days from the date aforesaid, and to pay the said Drexel, Morgan & Co. in cash for the said securities the amount of the said indebtedness, with interest, and
1851 the expenses on or before the 15th day of January, 1885.

Third. It is understood and agreed that Drexel, Morgan & Co. assume no liability with respect to the delivery of the shares of the capital stock and the mortgage bonds of the said Chicago and Great Southern Railroad Company unless and until delivered to them by the said Crawford, and that the said Nickerson and Porter are not to be required to take any of the said securities unless the said shares and bonds are issued and transferred as stipulated in the agreement of even date herewith between the said Crawford and the said Drexel, Morgan & Co.

In witness whereof the parties hereto have hereunto set their hands the day and year first above written.

(Signed) DREXEL, MORGAN & CO.

List of Securities Covered by the Foregoing Agreement and now in the Possession of Drexel, Morgan & Co.

$1,000,000 Chicago & Great Southern Railroad Company, northern division, bonds (1st mortgage).

8,648 shares Chicago & Block Coal Railroad Company stock.

1,201 shares Indiana & Chicago Railway Company stock.

The Chicago and Block Coal and the Indiana and Chicago shares as above are to be surrendered to Mr. Crawford on delivery to Drexel, Morgan & Co. of $492,750 of the Chicago and Great Southern Railroad Company stock, being part of the $1,200,000 of said stock specified in the foregoing agreement.

COMPLAINANT'S EXHIBIT 4. John Gray, special commissioner.

Letter of Drexel, Morgan & Co. to Lacey, Secretary, August 12th, 1884.

NEW YORK, *August 12th*, 1884.

F. S. Lacey, Esq., sec'y Chicago & Great South'n R'y Co., 115 Monroe St., Chicago, Ill.

DEAR SIR: Mr. Henry Crawford having delivered to us certificates for 12,000 shares of the stock of the Chicago and Great Southern R'y Co. issued in accordance with the articles of consolidation between the Chicago & Great So. R'y Co. & the Chicago & Block Coal R. R. Co. and under resolution of your board of directors dated May 5th, 1884, we herewith surrender 8,648 shares of stock of the Chicago & Block Coal R. R. Co., as required by said resolution. We are sending the stock to you by registered mail. Please acknowledge receipt.

Yours truly,

DREXEL, MORGAN & CO.

1852 *Letter of Drexel, Morgan & Co. to Lacey, Secretary, August 13th,* 1884.

COMPLAINANT'S EXHIBIT 5. John Gray, special com'n'r.

NEW YORK, *August, 13th*, 1884.

F. S. Lacey, Esq., sec'y Chicago & Great Southern R'y Co., 115 Monroe St., Chicago, Ill.

DEAR SIR: Referring to our respect of yesterday, we now beg to advise that we are sending you per registered mail 1,201 shares Indiana and Chicago R'y Co. stock. This surrender completes the requirements of your board of directors, as per its resolution of May 5, '84.

Kindly acknowledge receipt.

We enclose herewith powers of substitution, signed by A. J. Dull, relating to the Indiana & Chicago R'y Co. stock.

Yours truly,

DREXEL, MORGAN & CO.

Letters Between Drexel, Morgan & Co., Porter & Nickerson, Dated August 13, 24, 27, *and October* 24, 1884.

Solicitor for defendant offered in evidence the following letters, viz: Letter dated New York, August 13, 1884, Drexel, Morgan & Co. to S. M. Nickerson and H. H. Porter. Copy of letter August 22, 1884, to Drexel, Morgan & Co., New York, signed by Samuel M. Nickerson and H. H. Porter.

Letter of August 19, 1884, from Drexel, Morgan & Co. to Samuel M. Nickerson.

Letter dated New York, August 27, 1884, from Drexel, Morgan & Co. to Samuel M. Nickerson and H. H. Porter.

Letter dated New York, October 24, 1884, to Samuel M. Nickerson *to* Drexel, Morgan & Co.

Which letters are as follows:

"New York, *August* 13, 1884.

"S. M. Nickerson, Esq., and H. H. Porter, Esq., care First Nat. Bank, Chicago, Ills.

"Dear Sirs: Referring to your agreement with us, dated June 25, '84, we beg to inform you that we have surrendered to the Chicago & Great Southern R'y Co. the shares of the Chicago & Block Coal R. R. and of the Indiana & Chicago R'y, which we previously held, and that Mr. Henry Crawford has caused to be delivered to us 12,000 shares of the capital stock of the Chicago & Great Southern R'y Co. Mr. Crawford has also effected the delivery to us of $200,000 bonds of the same company (duly certified by the trustees) in addition to the $1,000,000 of said bonds which we already hold.

"These securities constitute those specified as requisite for the agreement with you to become operative, and as they are now in our possession said agreement accordingly does become operative, which please note and confirm.

"We remain yours very truly,

"(Signed) DREXEL, MORGAN & CO."

1853 "22d August, 1884.

Messrs. Drexel, Morgan & Co., New York:

We have your favor of the 19th and note contents of same. If we are correct, now that sixty days from June 20th have passed, you have sold us all your rights under your loan to Mr. Henry Crawford, and we have agreed to pay you on or before 15th January, 1885, the amount of Mr. Crawford's debt to you. We beg to call your attention to Mr. Crawford's agreement with you of 25th of June, 1884, for the amount of additional bonds he promised to place with you, as we understood it. If, however, we hold your right to prevent the issuance of the $800,000 bonds, and they cannot be legally issued, it will be entirely satisfactory to us.

Yours truly, SAMUEL M. NICKERSON.
H. H. PORTER."

"New York, August 19, 1884.

Samuel M. Nickerson, Esq., care First National Bank, Chicago, Ill.

Dear Sir: We are in receipt of your favor of 15th inst., and in reply would say that $200,000 of bonds and $1,200,000 of stock were the amounts of the bonds and stock which, under the resolutions, we were authorized to receive.

The balance of the bonds have not yet been signed by Mr. New, and cannot be, except with your consent. As we understand the matter, upon your purchasing the securities we can transfer to you whatever rights we have, but perhaps it would be as well for you to apply to Mr. Henry Crawford for any explanation you wish beyond what we have given you.

Yours very truly, DREXEL, MORGAN & CO."

"NEW YORK, August 27, 1884.

Messrs. Sam'l M. Nickerson and H. H. Porter, c. o. First Nat'l Bank,
Chicago, Ill.

DEAR SIRS: We are in receipt of your favor of the 22d inst., which is duly noted.

We understand the arrangement as you do, viz., that sixty days from June 20th having passed, we have sold you all our rights under our loan to and agreement in reference thereto with Mr. Henry Crawford, for which you are to pay us, on or before Jan'y 15th, 1885, the amount of Mr. Crawford's debt to us, with interest and expenses.

Mr. Crawford has given us, as already advised to you, 200 more of the Chicago & Great Southern R. R. bonds, making, together with the $1,000,000 of said bonds which we had before, a total of $1,200,000. We have also received, as we have already informed you, $1,200,000 of the stock of the same company.

The remainder of the bonds are in the hands of Union Nat'l Bank of Chicago, unsigned by the trustee, and, therefore, not issued, but they are subject to our call and control, and cannot be issued except with our consent.

1854 By Mr. Crawford's agreement with us they are, when issued, to be given to us as security for his debt.

As we understand from your letter, this position of affairs is entirely satisfactory to you.

We are yours very truly,

DREXEL, MORGAN & CO.

NEW YORK, *October* 24, 1884.

Sam'l M. Nickerson, Esq., First Nat. Bank, Chicago, Ill.

DEAR SIR: As requested in your favor of the 22nd inst., we hand you herewith a statement showing the amount due us Nov'r 1st next on account of the Henry Crawford notes, viz., $387,519.26.

We are yours truly,

DREXEL, MORGAN & CO.

EXHIBIT E. John Gray, special commissioner.

Contract of December 26, 1884, for the Purchase of Bonds and Stock by the "Syndicate" from Henry Crawford.

This agreement, made this twenty-sixth day of December, A. D. 1884, by and between Henry Crawford, of the city of Chicago, party of the first part, and H. H. Porter and associates, hereinafter termed "The Syndicate," party of the second part, witnesseth: That the parties hereto, in consideration of the promises, agreements, and payments hereinafter set forth as to be by them kept, performed, and made, have mutually agreed and do hereby mutually agree as follows:

The party of the first part agrees—

SECTION 1. To sell and hereby sells to "The Syndicate" twelve hundred (1,200) of the first-mortgage bonds of the Chicago and Great

Southern Railway Company, owned by him, and constituting all of the outstanding bonds of said company, the said bonds aggregating at the face thereof twelve hundred thousand dollars ($1,200,000), and being numbered from 1 to 1,200, both inclusive, and secured by the trust deed to John C. New, trustee, dated November 1, 1881, and agrees to deliver, or procure to be delivered, within twenty days from the date hereof, to said H. H. Porter, the said bonds and all the coupons originally to each thereof annexed.

Also, all of the capital stock of the said Chicago and Great Southern Railway Company owned by him, amounting in the aggregate to about twelve hundred thousand dollars ($1,200,000), and to deliver, or procure to be delivered, within twenty days from the date hereof, to said H. H. Porter, certificates for said capital stock, properly assigned in blank or otherwise, as said Porter may direct, said stock being full paid and non-assessable, and being all of the issued capital stock of said company, except about thirty-eight thousand dollars ($38,000), par value, which has been heretofore issued to townships in Newton and Benton counties, Indiana.

Also, all of the capital stock of the Union Coal Company, amounting in the aggregate to one hundred thousand dollars ($100,000),
the same being owned by the said party of the first part, and
1855 being full paid and non-assessable, and within twenty days
from the date hereof to deliver or procure to be delivered
to said H. H. Porter certificates for said capital stock, properly assigned in blank or otherwise, as said Porter may direct, it being the intention hereof to sell unto said "the syndicate" all of the right, title, interest, and property of every name and nature which the party of the first part has in and to the said bonds and the said railway stock and the said coal company's stock.

SECTION 2. The party of the first part will within twenty days from the date hereof procure the construction contract heretofore (to wit, on or about the 18th day of March, 1882) entered into by and between him and the said Chicago and Great Southern Railway Company for the construction and equipment of its railway to be canceled, and will discharge by proper and valid instrument said company of and from any and all claim which he may have under and by virtue of said contract to any of the income bonds of said company, as therein provided, and from any and all other or further claim or claims upon said company under said contract or in anywise out of the same growing.

"The syndicate" hereby agrees—

SECTION 3. To pay to the party of the first part for the said bonds and railway stock and coal company stock hereinbefore mentioned the sum of five hundred thousand dollars ($500,000), to be paid and applied as follows, to wit:

First. The satisfaction and cancellation of the notes of the said party of the first part for three hundred and fifty thousand dollars ($350,000) and interest, payable to Drexel, Morgan & Co., and being for money advanced said party of the first part by said firm under contract of January 5, 1883, by which all the said recited first-mortgage bonds and stock were held as collateral, and which said indebtedness of the party of the first part has been transferred to and now belongs to party of the second part.

Second. To pay and clear off any and all claims against said Chicago and Great Southern Railway Company which may be decided by the court to be liens upon the said line of railway paramount to the lien of the bonds and coupons secured by the trust deed to said John C. New, dated November 1, 1881, or which the court may decide shall be equitably payable out of the proceeds of the sale of the said line of railway prior to any payment of the said bonds or coupons, including therein any and all claims for right of way and depot grounds, engine-house and station buildings, water-tanks and shops, between Fair Oaks and Yeddo, both inclusive, bridges and other struct-
1856 ures heretofore built and put in place on said railway and essential to the operation thereof, but the title to which is not in said railway company, and which the court may decide must be paid for in preference to said bonds, and also any and all indebtedness incurred by the receiver in possession of said property prior to January 15, 1885, and not paid out of moneys earned by the operation of said road prior to January 15, 1885.

It is expressly agreed that if the court shall decide that any sum of money due at the date hereof from said railway company to any person or corporation for purchase-money or rental of equipments purchased or used by said railway company is payable out of the proceeds of sale of said line of railway, upon foreclosure or otherwise, prior to the application of any of said proceeds to said bonds or coupons, then such sums shall be deemed to fall within the scope of subdivision two of section three hereof. But except such sums so decided to have preference, as aforesaid, no part of the consideration coming to the party of the first part hereunder is to be used in making payment of rental or purchase-money of equipment of any kind.

Third. Also all indebtedness of said Union Coal Co., if any such there be, except for current pay-rolls and supplies, and royalty not exceeding fifteen hundred dollars ($1,500).

Fourth. Any sum remaining of said five hundred thousand dollars ($500,000), after the payments authorized in subdivisions one, two, and three of this section, shall be then payable to said Henry Crawford, or his assigns.

SECTION 4. Whereas the said sum of five hundred thousand dollars ($500,000) has been raised by subscription by the members of "the syndicate," who propose to foreclose the mortgage on said railway and to reimburse themselves and make their profit in said adventure either out of the proceeds of the railway property covered by said mortgage, realized at such foreclosure sale, or if said property shall be bid off at said sale for the benefit of "the syndicate," then out of the stock or bonds, or both, or out of the proceeds of the stock or bonds, or both, of a new company to be organized for the purpose, and to which the purchasers at said foreclosure sale shall convey said property, and out of the stock or proceeds of the stock of said coal company:

Therefore "the syndicate," as further consideration for the transfer aforesaid of said bonds and stocks, agrees with the party of the first part to pay to him, or his assigns, one-third of the sum of money realized by "the syndicate" at such foreclosure sale, should said property be bid off by a stranger to "the syndicate," or by a competitor of "the syndicate:" Provided, and it is distinctly understood, That in no event shall the amount so to be paid to the party of the first part out of such sale proceeds exceed the sum of two hundred and fifty thousand dollars ($250,000), with interest at the rate of six (6) per cent. per annum from the fifteenth day of January, 1885. If the said property shall be bid off at such sale by or for the benefit of "the syndicate," and conveyed to such new company to be organized, as aforesaid, and "the syndicate" shall receive stock or bonds, or both, of the new company for said property if and whenever "the syndicate" shall market its said 1857 stock or bonds, or both, it shall pay over to said party of the first part, or to his assigns, one-third of all sums received for the same until such payments shall amount in the aggregate to said sum of two hundred and fifty thousand dollars ($250,000), with interest as aforesaid, and no more.

If "the syndicate" shall at any time take their reimbursement and profit in said adventure by a distribution in kind among the members thereof of the bonds or stock, or of both said bonds and stock, and of said Union Coal Company's stock, then and in such case "the syndicate" shall deliver to said Henry Crawford, or his assigns, one-third of said bonds or stock, or both, and of said Union Coal Company's stock, or, at the option of said "the syndicate," it may, in lieu of delivering said securities as last aforesaid, pay to the said Crawford, or his assigns, the said sum of two hundred and fifty thousand dollars ($250,000), with interest as aforesaid: Provided, however, and it is agreed, That in no event shall the said Crawford, or his assigns, have the right to demand that "the syndicate" shall market said securities, or any thereof, or shall distribute the same in kind, but all questions as to whether said securities shall be sold, and if so, when they shall be sold, or whether they shall be divided in kind, and if the latter, when they shall be so divided, shall be subject to the will of "the syndicate," to be determined as provided in the instrument of subscription signed by the members thereof.

Section 5. The party of the first part hereby, in consideration of the premises, guarantees and agrees that the claims, liens, and other possible indebtedness mentioned in subdivision two, which shall be held to be prior in right to payment over said twelve hundred bonds and coupons, shall not in any event exceed the sum of one hundred thousand dollars ($100,000).

And he hereby agrees for himself, and for his assigns, that should the said claims decided to be prior to such bonds and coupons exceed the said sum of one hundred thousand dollars ($100,000), he will, on demand, pay to the said "the syndicate" such excess, with interest thereon at the rate of six (6) per cent. per annum from the time the same shall have been by "the syndicate" expended; and such excess may be, at the option of "the syndicate," applied upon the sums contingently payable to the party of the first part, or his assigns, under the provisions of section four hereof.

SECTION 6. The party of the first part, in consideration of the premises, hereby further agrees and guarantees that the said stock of said Chicago & Great Southern Railway Company is full paid and non-assessable, and that said stock of said Union Coal Company is full paid and non-assessable, and that the said Union Coal Co. has no notes or other negotiable obligations outstanding.

SECTION 7. This agreement shall supersede and be in all respects a substitute for any and all agreements in anywise inconsistent herewith heretofore entered into, whether verbal or written, between the party of the first part and S. M. Nickerson and H. H. Porter, or either of them, in relation to the said bonds and stock or other property, or any portion thereof, in this agreement mentioned.

1858 Section 8. If any question or controversy shall arise between the party of the first part and "the syndicate" as to the proper construction of this agreement, or any portion of the same, as to the rights, duties or liability of either of the parties hereto hereunder, such controversy or question shall be settled or determined by Mr. John Crerar, who is hereby chosen and appointed by both the parties hereto as referee hereunder, and the determination of said Crerar shall be binding upon the parties hereto. If in any case arising arising under this section said Crerar cannot, for any reason, act as such referee, then Mr. O. W. Potter shall act as such referee for the time being.

Witness the signature of the party of the first part and the signature of said H. H. Porter, in behalf of himself and his associates.

HENRY CRAWFORD,
H. H. PORTER.

Witness:
SAM'L M. NICKERSON.

I hereby acknowledge that H. H. Porter has this day paid for my account under this contract three hundred and ninety-two thousand three hundred and sixty-three dollars and twenty-four cents ($392,363.24) by payment of my indebtedness to Drexel, Morgan & Co. to that amount.

January 15, 1885.

(Signed.) HENRY CRAWFORD.

EXHIBIT N. John Gray, special commissioner.

Assignment by Crawford to First National Bank of His Interest in Syndicate's Contract.

I hereby accept notice of this agreement and all its terms, and undertake and agree to account with said First National Bank of Chicago instead of said Crawford accordingly.

(Signed) H. H. PORTER.

This agreement, made this 26th day of December, A. D. 1884, by and between Henry Crawford of Chicago, party of the first part, and the First National Bank of Chicago, Illinois, party of the second part, witnesseth:

That whereas the party of the first part is the owner of certain first-mortgage bonds of the Chicago and Great Southern Railway Company, amounting in the aggregate to twelve hundred thousand dollars, and is also the owner of certain stock of said railway company of the par value of twelve hundred thousand dollars; and

Whereas the said party of the first part was indebted to Drexel, Morgan & Co., of New York, in the sum of three hundred and fifty thousand dollars and interest, and as first collateral to which indebtedness the said Drexel, Morgan & Co. held the said bonds and stock of said Chicago and Great Southern Railway Company; and

Whereas the said party of the first part is likewise indebted to
the party of the second part in about the sum of two hundred
1859 and ninety thousand dollars, and the party of the second
part holds by way of second collateral, subject only, however,
to said claim of Drexel, Morgan & Co., the said bonds and stock of said Chicago and Great Southern Railway Company, and also as first collateral holds certain other securities, viz:

4,700 shares of Louisville, New Albany and Chicago Railway Company stock.

37 shares Gulf, Colorado and Santa Fé Railroad Company stock.

$26,000 bonds of Wabash, St. Louis and Pacific railway (Chicago Division).

2 notes of J. N. Herrick, for $11,000, secured by trust deed.

Whereas the said party of the first part desires to sell said bonds and stock of the Chicago and Great Southern Railway Company to Henry H. Porter and his associates, who have agreed, as part of the purchase-money, to cancel and satisfy the notes given by the party of the first part to Drexel, Morgan & Co. as aforesaid, but the party of the first part cannot consummate said sale to said Porter and associates unless and until the claim of the said party of the second part upon said stock and bonds is released; and

Whereas the party of the first part, being unable otherwise to pay said indebtedness so due to said party of the second part and thereby to free said stock and bonds from the claim of said party of the second part, has offered to the party of the second part, as collateral to said indebtedness, to assign over unto it all the right, interest, and claim of the party of the first part to all moneys coming to him under and by virtue of the agreement entered into on the 26th day of December, A. D. 1884, between said party of the first part and said Porter, in behalf of himself and associates, a copy whereof is hereunto annexed and made a part hereof, expressly and as fully as though written at length herein, on condition that said party of the second part would, in consideration of such assignment, release its claim and lien upon the said bonds and stock of said Chicago and Great Southern Railway Company, and upon the other securities and property above mentioned now held by the party of the second part; and

Whereas the party of the second part has accepted the offer of said party of the first part:

Now, therefore, in consideration of the premises and of one dollar by each of the parties hereto paid unto the other, the receipt whereof is hereby acknowledged, it is hereby agreed as follows:

SECTION 1. The party of the first part, in consideration of the premises and in consideration of the release by the party of the second part of its claim and lien upon all the securities and property it now has or holds as collateral, does hereby transfer and make over unto the party of the second part the said agreement with said Porter (a copy of which is hereto annexed), together with all of the rights, claims, demands, moneys, and payments which the party of the first part has or is entitled to in law or equity under said agreement, and hereby authorizes the said party of the second part to sue for, demand, and collect of said Porter and associates, either in its own name or in the name of the party of the first part, as it may be
1860 advised, all moneys, stocks, bonds, or other property of any kind
to which the party of the first part is or may become entitled under said agreement, as fully to all intents and purposes as if the party of the second part were mentioned and included in the said agreement with said Porter as the party of the first part; and the party of the first part authorizes the said party of the second part if it shall receive under the said agreement any bonds or stock, or both, of any company, as it is authorized by the party of the first part to do, to sell the same at public or private sale, without notice to the party of the first part, at such price, and upon such terms as it may seem best, and to apply any and all sums which it may receive under said agreement, whether paid to it in money, or realized by it from the sale of securities as aforesaid, to the payment of the indebtedness due to said party of the second part from the party of the first part, according to the terms of the instruments evidencing such indebtedness.

The party of the second part hereby agrees to apply such moneys so received by it, as hereinbefore provided, upon the indebtedness due from said party of the first part, as aforesaid, and to account and pay over to the party of the first part any and all sums which may come into its hands under said agreement, which shall remain after the payment of said indebtedness, together with interest thereon, in accordance with the terms of the instruments evidencing the same.

Witness the hands and seals of the parties in duplicate.

HENRY CRAWFORD. [SEAL.]
FIRST NATIONAL BANK OF CHICAGO,
By L. J. GAGE, *V. Pt.*

CHICAGO, *Jan'y* 16, 1885.

Rec'd 4,700 shares L. N. A. Chi. R'y stock; received notes I. N. Herrick for $11,000; 37 shs. Gulf Col. & S. F. Ry. Co.; 26,000 cu. bonds Wabash, St. Louis & Pacific R'y, Chicago division.

(Signed) HENRY CRAWFORD.

1861 **Exhibit O.** **John Gray, special commissioner.**

Note of Crawford to First National Bank.

$297,393.17. CHICAGO, *January* 15*th*, 1885.

On demand, after date, I promise to pay to the order of the First National Bank of Chicago, at their office, two hundred and ninety-seven thousand three hundred ninety-three $\frac{17}{100}$ dollars, for value received, with interest at the rate of 6 per cent. per annum, after date, having deposited with said bank as collateral security for payment of this or any other liability or liabilities of ours to said bank, due or to become due, or that may be hereafter contracted, the following property, viz: Assignment of contract between myself and H. H. Porter and associates, dated Dec. 26, 1884, the market value of which is now $—, with the right to call for additional security should the same decline; and, on failure to respond, this obligation shall be deemed to be due and payable on demand, with full power and authority to sell and assign and deliver the whole of said property, or any part thereof, or any substitute therefor, or any additions thereto, at any brokers' board, or at public or private sale, on the non-performance of this promise, or the non-payment of any of the liabilities above mentioned, or at any time or times thereafter without advertisement or notice; and, after deducting all legal or other costs and expenses for collection, sale, and delivery, to apply the residue of the proceeds of such sale or sales so to be made to pay any, either, or all of said liabilities as said bank or its president or cashier shall deem proper, returning the overplus to the undersigned.

HENRY CRAWFORD.

Subscription Agreement Between Members of Syndicate.

We severally hereby agree to pay the sums set opposite our respective names hereunder for the purpose of purchasing the capital stock of the Union Coal Company, said stock being at par $100,000, and being full paid and non-assessable; and twelve hundred thousand dollars of the first-mortgage bonds of the Chicago and Great Southern Railway Company, and about twelve hundred thousand dollars of the full-paid capital stock of said railway company, and for the purpose of paying and discharging any and all liens upon said railway paramount to the lien of said mortgage, and such other claims in addition as our agent may think it for our interest to pay, and for paying the expense of foreclosing said mortgage upon said railway property, and such other expenses as in the judgment of our agent it may be advantageous to incur in the premises, including such rolling-stock and other property as such agent may choose to purchase for use on said railway.

Our said subscriptions are to be paid within ten (10) days from the date hereof to Henry H. Porter, one of the subscribers hereto, who is hereby constituted the agent and attorney of each of us to make such purchase of securities and property, and to procure the foreclosure of said mortgage, and to bid off said property in his own name or otherwise, as he may be advised; to organize or procure the organization of a railway company under the laws of the State of Indiana, to which the said property so to be bid off at such foreclosure sale shall be conveyed.

1862 And the said Porter is authorized and empowered to choose the board of directors of such new corporation, and procure the election of such officers as he may see fit, and to fix the price at and upon which the property so to be bid off at said foreclosure sale shall be conveyed to said railway company, and to take payment for said property in mortgage bonds of said new company, or in the capital stock of said company, or in both such bonds and stock as he may think best, and to market the said stock or bonds, and said coal company stock, or to distribute the same among the undersigned at his discretion, and generally to manage and control the said matter according to his own judgment.

When the said mortgage shall have been foreclosed and said new company organized, and said property shall have been conveyed to it by said Porter, or by whomsoever for him shall bid off the same, and convey the same to said new company, we agree severally to take and accept from said Porter, or such other person as shall act in his stead, as aforesaid, such an amount of the stock or bonds, or both, of said new company, and of said coal company stock; or, if the said stock or bonds shall have been sold, such proportion of the proceeds thereof as each subscription hereto shall bear to the sum of seven hundred and fifty thousand dollars, or to said last-named sum, plus such sum or sums as may be subscribed hereto, in excess of the sum of five hundred thousand dollars, mentioned in the contract with Henry Crawford, hereinafter referred to (it being the intention that said Porter may take additional subscriptions for the purchase of rolling-stock, and such other purposes as he may deem best), reference being made to section three of an agreement executed the 26th day of December, 1884, between Henry Crawford, of the city of Chicago, and the undersigned, for the purchase of said securities; and the delivery of said stock or bonds, or both, as aforesaid, or the payment to each of us of our proportion of said proceeds as aforesaid, shall be conclusive evidence in all courts and places that said subscriptions are fully reimbursed, and that our transactions under this paper are absolutely closed.

It is expressly agreed that each subscriber hereto acts for himself alone, and that the relation of partner shall not be deemed to exist between the subscribers hereto by virtue hereof.

It is also fully understood and expressly agreed that neither the said Porter, nor any one chosen hereunder to act in his stead, shall be liable to any subscriber hereto for any mistake or error of judgment in his transactions hereunder, nor in any event except for actual bad faith.

It is understood that either of the subscribers hereto, including said Porter, shall be at liberty to purchase the interest of any other subscriber hereto for his sole use and benefit.

The distribution of the assets of the "syndicate" shall be made by said Porter, or his substitute, appointed as hereinafter provided,

at such time as he shall think best, and he is authorized to distribute the assets in kind, or to market the same and distribute the proceeds as in his judgment shall seem best: Provided, That upon the
1863 demand of the owners of three-fourths in amount of the subscriptions hereto such assets shall be distributed in kind, or sold, and the proceeds distributed.

If the said Porter shall die, or become for any reason incapable of acting hereunder, a successor or substitute for him, with the same powers, shall be designated in writing by S. M. Nickerson, or in his absence or inability for any reason to act, by L. J. Gage, and if both should be unable to act, a majority in amount of the subscribers, or their assigns, shall have the power in writing to designate such successor or substitute.

Chicago, Ill., January 2, 1885.

Endorsement: This paper is the syndicate agreement referred to in contract of Dec. 26, 1884, between us. H. H. Porter, Henry Crawford.

	H. H. Porter, two hundred and fifty thousand dollars.
Paid 1–2–'85. Receipt given.	Isaac H. Wing, fifteen (15) thousand dollars.
P'd Feb'y 6, '85, and receipt given.	E. W. Winter, five (5) thousand dollars.
Paid 1–14–'85, and receipt sent him.	Henry Seibert, fifty thousand dollars.
Paid 1–12–'85, and receipt given.	Sam'l M. Nickerson, one hundred and fifty thousand dollars.
Paid 1–14–'85, and receipt given.	E. F. Lawrence, five thousand $\frac{00}{100}$ dollars.
Paid July 23, '85, with interest [at] 6 %, and receipt given.	R. R. Cable, twenty-five thousand dollars.
Paid $15,000 Jan'y 16, '85, and receipt given. Paid $10,000 Feb'ry 6, '85, and receipt given.	John M. Durand, twenty-five thousand dollars.
Paid M'ch 4, '85, and receipt given to W. R. Stirling.	Alex. J. Leith, twenty-five thousand dollars.
Paid $20,000 1–23–'85, and receipt given.	Robert Law, twenty-five thousand dollars.
Paid. Authority to draw at sight Jan'y 22, '85.	David Downs, by H. H. Porter, twenty-five thousand dollars.
Paid April 16, '85, $5,175.00.	H. H. Porter, for C. W. Porter, five thousand dollars.

Certificates of Stock Bought by the Syndicate.

Solicitor for defendant introduced in evidence thirty[-five] certificates of stock, numbered from 1 to 25, inclusive, of which Nos. 1 to 5, inclusive, and Nos. 31 to 34, inclusive, are for a thousand shares each,

each share of the par value of one hundred dollars, and numbers 6 to 30, inclusive, for one hundred shares each of the par value of one hundred dollars per share, and number 35 for five hundred shares of the par value of one hundred dollars per share, all of said shares of stock bearing date of issue, Chicago, Illinois, January 26th, 1884, signed by Henry Crawford, president, F. F. Lacey, secretary, and bearing the corporate seal of the company, and all issued to Henry Crawford, and all assigned in blank by Henry Crawford, witnessed by Walter B. Howe, and which certificates of stock are each of the following tenor and effect:

Capital, $2,000,000.

No. 1. 1,000 shares.

The Chicago & Great Southern Railway.

1864 This is to certify that Henry Crawford is entitled to one thousand shares, of one hundred dollars each, of the full-paid capital stock of the Chicago & Great Southern Railway Company, transferable on the books of the company in person or by attorney upon the surrender of this certificate.

Chicago, Ill., Jan. 26th, 1884.

HENRY CRAWFORD, *President.*

Attest: F. F. LACEY, *Secretary.* [SEAL OF COMPANY.]

STATE OF INDIANA:

Endorsed on back as follows:

Transfer.

——, 188–.

For value received — hereby sell and assign — shares of the within stock to ——, and hereby constitute —— as — true and lawful attorney to make all and necessary transfers on the books of the Chicago & Great Southern railway.

Witness my hand.

HENRY CRAWFORD.

Witness:

WALTER B. HOWE.

The above evidence as to the stock certificate is agreed to by the counsel for the respective parties in lieu of the original certificates themselves.

Letter of Porter to Drexel, Morgan & Co. of January 12, 1885.

JAN. 12TH, '85.

Messrs. Drexel, Morgan & Co., cor. Wall & Broad street-, New York city:

GENTLEMEN: In accordance with the contract of Mr. S. M. Nickerson and myself with you, dated June 25th, 1884 (Mr. Nickerson's, interest in which has been purchased by me), and as further referred to in your letters of August 13th, 19th, and 27th, and Oct. 24th, 1884, I herewith enclose you drafts of First National Bank, Chicago, as follows:

No. 662,251 on 4th National, N. Y.	$150,000 00
" 44,841 " Central " "	100,000 00
" B, 114,154, on National City, "	142,363 24
Total	$392,363 24

Being in payment of the amount due you as per your account to November 1st, 1884	$387,519 26
To which is added interest to Jan. 14th (75 days)	4,843 98
Total	$392,363 24

Will you please send me at once by express the stock and bonds of the Chicago & Great Southern R. R., together with Mr. Crawford's notes canceled, and an order on the Union National Bank, Chicago, for the securities they hold, which are, I understand, eight hundred thousand dollars of Chicago and Great Southern bonds unsigned by the trustee? In sending these please address
1865 them to H. H. Porter, and put the whole in another wrapper addressed to the First National Bank, Chicago, sending it by Adams Express, and valued at $50,000, express charges to be collected on delivery to 1st National Bank.

Mr. Crawford is not here to-day, but I have assumed there can be no question between you and him as to the amount now due you.

Will you also please send me enclosed in the same package with the bonds, &c., all the papers relating to this road, abstracts of title, &c., and any other information you may have retained? Among these papers I understand are various orders from Mr. Dull, Mr. Crawford, and Mr. New with reference to the issuing of bonds, &c. I have not before me now just what they are, but presume you have them altogether, and I shall be much obliged if you will take special pains to see that everything is sent.

I will also thank you if you will telegraph me on receipt of this letter, addressing me at room 38, Portland Block, Chicago.

Very truly yours,
(Signed) H. H. PORTER.

I concur in the above, and authorize the delivery to Mr. Porter of the securities referred to.

(Signed) SAM'L M. NICKERSON.

Letter from Drexel, Morgan & Co. to H. H. Porter, January 14, 1885.

NEW YORK, *January* 14, 1885.

H. H. Porter, Esq., room 38, Portland Block, Chicago, Ill.

DEAR SIR: We are in receipt of your favor of the 12th inst., covering drafts for $392,363.24, amount due us per agreement of June 25th, 1884, with Mr. S. M. Nickerson and yourself.

As requested, we send you by Adams Express, under your address, covered by wrapper addressed to 1st National Bank of Chicago, valued at $50,000, express charges to be paid on delivery to that bank:

1. 1,200,000 stock (12,000 shares, $100 each) Chicago and Great Southern R'y Company.

2. 1,200,000 bonds (1,200, $1,000 each).

3. Order on the Union National Bank of Chicago for $800,000 of these bonds.

4. Agreement of John C. New, trustee, dated Jan. 27, '82, as to his certificate of bonds, subject to the consent of A. J. Dull, with endorsement of A. J. Dull, dated Jan. 5, '83, in our favor, and endorsed by us, dated Jan. 14, 1885, in your favor.

5. Canceled promissory notes of Henry Crawford.

$160,000 } Dated Jan. 5, '83, payable 6 mo. after date, with
100,000 } interest from date.
50,000 }
1866 50,000, " April 27, '83.
50,000, " Aug. 13, '83.
on demand — date.

6. Agreement, dated June 23rd, 1881, between William Foster and Henry Crawford, relating to the purchase by the former of certain Indiana & Chicago Railway Co. stock.

7. Agreement, dated March 15, '82, between Henry Crawford and William Foster, relating to the purchase by the former of certain Indiana & Chicago Railway Co. stock.

8. Agreement, dated April 23rd, '82 (memorandum in pencil, "this is really dated April 27, 1881"), between Henry Crawford and Henry McCorkick, relating to the purchase by the former of certain Chicago & Block Coal R. R. Co. stock.

9. Consolidation agreement, dated March 23, '83, between the Chicago & Great Southern Railway Co. and the Chicago & Block Coal R. R. Co.

10. Certified copy of resolutions, dated May 5, '84, by the board of directors of the Chicago & Great Southern R'y Co. as to the issue of their stock in place of an equal amount of Chicago & Block Coal R. R. Co. stock, and an additional issue of their stock to pay for construction, so as to make the total of both issues $1,200,000.

11. Sundry vouchers for payments made by Henry Crawford on the Chicago & G't Southern Railway Company ac., and covered by draft on us.

Kindly acknowledge receipt.
Very truly yours, DREXEL, MORGAN & CO.

P. S.—We have acknowledged receipt of your remittance by telegraph, and advise you that your instructions will be followed.

COMPLAINANT'S EXHIBIT P. John Gray, special commissioner.

Letter from F. F. Lacey to Drexel, Morgan & Co., August 16, 1884.

AUGUST 16TH, '4.

Drexel, Morgan & Co., New York city.

GENTLEMEN: I am in receipt of your favors of the 12th and 13th, and the stock mentioned therein, namely, 8,648 shares of stock of the Chicago & Block Coal R. R. Co. and 1,201 shares of stock of the Indiana & Chicago R'y Co.; also the powers of substitution, signed by A. J. Dull, relating to the Indiana & Chicago R'y Co. stock.

I am, gentlemen, yours very truly,

F. F. LACEY, *Sec'y.*

1867 *Contract of Pittsburg Bessemer Steel Co., September* 30, 1881.

Contract—Schrader & Ellery, Chicago.

CHICAGO, 30*th Sept.*, 1881.

M. Chicago & G't Southern R. R. Co., 129 Dearborn street, Chicago.

DEAR SIRS: We have to-day bought for your account, from Pittsburgh Bessemer Steel Co., Limited, a lot of steel rails, on the following conditions, viz:

Quantity.—Two thousand tons.

Brand or make.—Pittsburgh Bessemer Steel Co. make.

Quality.—Best.

Price.—$59.60 (fifty-nine dollars sixty cents) per ton, 2,240 lbs., f. o. b. works.

Terms of payment.—Cash on delivery of bill of lading, inspector's certif. for each 500 tons, as fast as shipped, by sight draft, with exchange on N. Y., with B. of L. & Ins. Cer.

Place of delivery.—F. o. b. Works, Pittsburgh.

Time of shipment.—One thousand tons during November; one thousand tons during December, 1881.

Shipment directions.—Rails to be shipped per Pennsylvania Company to Goodland, Indiana.

NOTE.—Rails to be 52 lbs. per yard weight; 90 % to be of 30′ length, with not over 10 % of shorter length, and to diminish by 1 ft. differences. Second quality of rails, not exceeding 5 %, to be taken at 10 % reduction. Inspection at the mill at the expense of the purchaser.

Yours truly, SCHRADER & ELLERY.

We confirm your action on our behalf, as expressed in the above contract, and accept same as binding on us in every respect set forth.

Oct. 3, 1881.

CHICAGO & G'T SOUTHERN R'Y,
By H. CRAWFORD, JR., *Sec.*

Correct since interlineations.

[C. & G. S. Ry. Co. Seal.]

H. CRAWFORD.

Letter of E. W. Tolerton, Att'y for Smith Bridge Co., to H. H. Porter, Enclosing what Purports to be a Copy of the Contract for the Bridge over Wabash, and Porter's Reply.

TOLEDO, OHIO, *Dec. 5th*, 1884.

H. H. Porter, Esq., Chicago, Ill.

DEAR SIR: I am counsel for the Smith Bridge Co. in the matter of their claim against the Chicago & Great Southern R'y Co. I am advised that you and others have succeeded to the interests of Drexel, Morgan & Co. in the mortgage bonds of the road.

The contract under which the bridges were built (a copy of which I enclose) provides that the title to the bridges and the bridge material shall remain in the bridge company until they are paid for.

My purpose is to file my bill in the U. S. court at Indianapolis asking for the enforcement of this contract. 1868

This bill has been prepared for some time, but I have been prevailed upon to delay proceedings on account of the promises that the bridge Co. should have their money in a few days.

I have recently had a similar contract before the Ohio courts for construction in the case of the receivership of the Cincinnati & Portsmouth R'y Co. In that case the court decreed that the bridge Co. were entitled to the bridges, and gave the receiver authority to purchase them and pay therefor by issuing preferred receiver's certificates.

Now, the bridge Co., in order to avoid litigation, is willing to do the same thing in this case. If this syndicate now holding the bonds will satisfy this claim the bridge Co. will transfer to you all their rights, or they will sell the bridges to the receiver and accept preferred certificates in payment. Please advise me by an early reply.

Yours, etc., E. W. TOLERTON.

P. S.—I will come to Chicago at any time you may appoint, to meet with you relative to this matter.

This agreement, made and entered into this 26th day of October, 1882, by and between the Smith Bridge Company of Toledo, Lucas county, in the State of Ohio, party of the first part, and the Chicago and Great Southern Railway Company, a corporation formed under and pursuant to the laws of the State of Indiana, party the second part, witnesseth:

That whereas the party of the first part has this day and doth by these presents contract and agree to construct and build for the party of the second part a bridge over and across the Wabash river at or adjacent to the town or city of Attica, in the State of Indiana, consisting of six (6) spans of one hundred and fifty (150) feet each, of the pattern and style known as the Pratt combination truss with the Smith improvement, of the capacity of thirty-five hundred (3,500) pounds per lineal foot on a factor safety of five (5), all in accordance with the plans and specifications hereunto attached, marked Exhibits "A" and "B" and referred to and made a part of this agreement, to be fully completed, including the track stringers, ready to receive the ties and placed upon the piers and abutments prepared to receive the bridge constructed by the party of the second part in the Wabash river at Attica aforesaid—

For which bridge the said party of the first part is to receive the sum of thirty-eight ($38.00) dollars per lineal foot, making the sum of thirty-four thousand and two hundred ($34,200) dollars for said bridge, upon the terms and conditions hereinafter contained.

And the party of the second part agrees upon its part to pay said prrty of the first part said sum of thirty-eight ($38) dollars per lineal foot, or in all the sum of thirty-four thousand and two hundred ($34,200) dollars for such bridge—

1869 It being understood that said bridge is to be in all respects first class and to be made of good material, subject to inspection and approval of the engineer in charge of said work.

Payments to be made as follows, except otherwise agreed by the parties hereto:

On or about the first day of each and every month the party of the second part shall, by its chief engineer, cause estimates to be made of the amount and value of the bridge material and work done on the same delivered at the place of the erection of the said bridge, and also estimates of the amount and value of the bridge as placed in position, and the party of the second part shall pay the value of such estimates less ten per cent. retained until the bridge is fully completed, and the money due on such estimates to be paid on or about the 15th of each month upon final estimate and completion of the bridge. The balance due thereon is to be paid in accordance with the foregoing contract and price of said bridge, at which time the title of said bridge is to vest in said party of the second part, but during the construction of said bridge and until the contract price shall have been fully paid the title of said bridge material shall be and remain in the party of the first part as their individual property, and in default of payment of the contract price of said bridge the party of the first part reserves the right to remove said bridge and bridge material.

(Signed) CHICAGO AND GREAT SOUTHERN
RAILWAY COMPANY,
By H. CRAWFORD, SR., *Sec'y & Treas'r.*

CHICAGO, *Dec.* 2, 1882.

For value received I hereby guarantee the due performance by the Chicago and Great Southern Railway Company of all the covenants and payments by it agreed to be performed in the foregoing contract.

(Signed) HENRY CRAWFORD.

EXHIBIT R. John Gray, special commissioner.

DEC. 9TH, '84.

E. W. Tolerton, Esq., 43 Produce Exchange, Toledo, O.

DEAR SIR: Your favor of Dec. 5th received. Within a few days I hope to have made such progress in Chicago and Great Southern matters as will enable me to look into the position of the Smith Bridge Co. I have never seen the papers or known much about the question until your letter. I will try and fix a date soon when you and myself can meet in Chicago and examine it. In the meantime I presume there is no need for any action for your protection, as the road is in the hands of a receiver, and I could take no step to weaken your position if I would, and I certainly would not if I could.

Yours truly,
(Signed) H. H. PORTER.

1870 *Letters to Orville Peckham, Attorney for First National Bank of Chicago, About Liens on the Railroad.*

Solicitor for defendants offered in evidence, in connection with the deposition of Orville Peckham, the following letters:

"BRAZIL, IND., *July 2nd*, 1884.

Orville Peckham, Esq., Chicago, Ills.

DEAR SIR: Enclosed you will find copy of mortgage given by the Chicago and Great Southern Railway Co. to Jno. C. New, trustee. We had to copy in full in order to give you a correct idea of its contents, as it is of a complicated nature. This is the only lien against said R. R. Co. in this county, and there are no other notices of liens.

Our charge for this copy and the examination is five dollars ($5.00), which you will please be kind enough to remit.

Respectfully, &c. MATSON & LUTHER."

"COVINGTON, IND., *June 25th*, 1884.

Orville Peckham, Esqr., Chicago, Ills.

DEAR SIR: The recorder handed me your letter to answer, inquiring as to liens *vs.* Chicago & Great Southern R. R. There is a mortgage to John C. New, trustee, for two million dollars, dated Nov. 1st, 1881.

A mortgage by the said road & Chicago & Block Coal R. R. (a continuation of the former) to John C. New, trustee, for two million dollars, dated Ap'l 9th, 1883. There is costs *vs.* said R. R. in the Fountain C't C't for $15.75 and $16.20 and judgments for $180 and $113.90 and $160.05. The taxes are delinquent in the townships of Logan, Shawnee, Van Buren, and Mill Creek, and towns of Attica and Veedersburgh to the am't of $970.11.

Yours respectfully, HOMER SEWELL.
Fee, $2."

"Recorder's office, Benton county. Newton Sheetz, rec'r.

FOWLER, IND., *Jan.* 25, 1884.

Mr. Orville Peckham, Chicago.

DEAR SIR: Rec'd your letter in regard to liens, and you will find enclosed copy of both of them, as I did not understand what you had reference to about particulars; so just send copy of both of the liens.

Very resp., NEWTON SHEETZ.

Fee for same, $1.50."

1871 *Contractor's Notice of Lien.*

Notice is hereby given to all whom it may concern that the undersigned, who, under a contract with the Chicago and Great Southern Railway Company, constructed all the embankments and all the excavations on said road, from a point near the town of Oxford, in Benton county, Indiana, to a point near Attica, Fountain county, Indiana, and for which said railway company now owes him the sum of fifty-seven thousand and two hundred dollars ($57,200), intends to hold a lien on all that part of said road-bed so constructed by him, and the track laid thereon to secure said debt, said part of said road being more particular(ly) described as follows, to wit: Beginning at a point fifteen hundred (1,500) feet south of where said railroad crosses the Lake Erie and Western railroad in Oak Grove township, Benton county, Indiana, and running thence southward to where said railway crosses the Indianapolis grade or dirt road, in the east half of the southeast quarter of section thirty, in township twenty north, of range seven (7) west, in Warren township, Warren county, Indiana.

Given under my hand and seal this 17th day of October, 1883.

VOLNEY Q. IRWIN.

Recorded October 20, 1883, at 8 a. m.

Notice of Mechanics' Lien.

To Henry Crawford, president of the Chicago and Great Southern Railway Company, and the Chicago and Great Southern Railway Company, and to all others whom it may concern:

Take notice that I intend to hold a lien on the real estate described as follows: Southeast — of southeast quarter of section eighteen (18), township twenty-four (24) north, of range seven (7) west, of Benton county, Indiana, more accurately described [as] part of lots seven (7) and eight (8) in Jasper N. McConnell's first addition to the town of Oxford, Benton county, Indiana, and sixty (60) feet north from the northeast corner of lot 1, block 2, in Justus' first addition to the town of Oxford, county and State aforesaid, and on the depot and platform erected by said railway company on said lots, for the sum of one hundred and seventy-five dollars for work and labor done and performed on the said building and platform at the special instance and request of the said Henry Crawford, president of said railway company. The said labor and work was done and performed between the 8th day of August, 1883, and the 24th day of January, 1884, the last labor being on the 24th day of January, 1884, and within sixty days of filing this notice. The sum of one hundred and seventy-five dollars, with interest from the 24th day of January, 1884, at six per cent., is now due and unpaid.

Dated this 15th of March, 1884.

H. W. SHIDLER.

Recorded March 15, 1884, at 1 p. m.

1872 Office of recorder of Jasper county.

RENSSELAER, IND., *June 23rd*, 1884.

Mr. Orville Peckham.

SIR: Yours received. In reply will say I fail to find where any liens have been recorded against the Chicago and Great Southern Railway Company in my office.

Yours, THOMAS ANTRIM, *R. J. C.*

Recorder's office, Newton county.

KENTLAND, IND., *June 18th*, 1884.

Orville Peckham, Esq., Chicago, Ill.

DEAR SIR: Your favor of the 16th inst. is at hand. In reply I will say that the records of this office show two notices of mechanics' liens against property of C. & G. S. R'y Co. One in favor of A. G. Jakway for $667.93, dated Dec. 31st, 1883, and one in favor of A. W. Shidler for $190, dated Jan. 2nd, 1884.

Yours truly, ELISHA PARSONS,
Recorder Newton Co., Ind.

INDIANAPOLIS, *June* 18, 1884.

O. Peckham, Esq., Chicago, Ills.

DEAR SIR: Yours of 16th inst. received.

We have a mechanics' lien, etc., law passed by the Legislature of 1883, and which went into effect March 6, 1883. It is almost identical with the old law published in the 1881 revision. The 1883 act was enacted because it was feared, though we think without reason, that the old act which is published in the 1881 rev. had been repealed by the general repealing clause of what is known as the practice act of 1881. By the 1883 act mechanics, laborers, and material men can acquire a lien by filing notice in proper county recorder's office within sixty days after completion of work and furnishing of material. The section applicable to railroads is as follows:

"All persons who by contract with any railroad corporation, whose road is not in operation over the whole line thereof, or by contract with the lessee of such corporation, shall perform labor or furnish material for any such corporation or the lessee thereof in the way of grading, building, embankments, or making excavations for the track of any such railroad corporation, or who shall build or repair bridges or trestle-work for any such railroad corporation or the lessee thereof, shall have a lien upon such grading, embankment, or excavation, and upon as much of the track of said railroad as is covered by such grading, embankment, or excavation, and upon such bridges or trestle-work as they may have built or repaired pursuant to any contract made with such corporation or the lessee thereof upon so much of the track of such corporation as is covered by such bridge or trestle-work, and any such contractor or laborer, if at or before the time he furnished materials or does labor shall notify such corporation or lessee thereof, or its agent, that he is furnishing the materials or doing work for the contractor or sub-contractor, may also have such lien." Sec. 12, p. 143, Acts 1883.

1873 You are quite right in judging that the recorders' offices of the different counties through which the road runs are the proper places to look for information as to whether there are any liens.

You will, of course, bear in mind that parties have 60 days after completion of work or furnishing of material, as the case may be, to file notice in which to bring action to enforce lien.

We think we have answered you fully; let us know.

Very truly, JUDAH & JAMESON.

Recorder's office, Parke county.

ROCKVILLE, IND., *June 20th*, 1884.

First National Bank of Chicago.

SIRS: There is a deed of trust or mortgage, made by the Chicago & Great Southern Railroad Co. to John C. New, as trustee, for $2,000,000, dated April 18, 1883, and recorded April 28, 1883, book 11, page 337.

Yours truly, HENRY B. CORD, *Recorder*.

Recorder's office, Benton county.

FOWLER, IND., *Jan.* 21, 1884.

Mr. Orville Peckham, Chicago.

D'R SIR: Rec'd your letter and c'k for $1.50, and as to the amount, it is fifty-seven thousand two hundred ($57,200) dollars.

Very resp., NEWTON SHEETZ.

Recorder's office, Warren county.

WILLIAMSPORT, IND., *Jan.* 24, 1884.

Mr. O. Peckham.

SIR: Yours, bearing date June 16th, 1884, at hand.

Would say that A. J. McDonald filed a lien on the property of said R. R., $3,478.17; also Volney Q. Irwin filed mechanics' lien on same, $57,200; and also one Felix Warbritten filed notice of lien on said property for the sum of $288.

Said liens have all been foreclosed at the March term of court.

Yours, &c., THOS. J. GRAVES, *Recorder*.

$1.00 fee. Please send by return mail.

Receipt of Nickerson's Subscription to Syndicate.

"Office of H. H. Porter, 38 Portland Block.

CHICAGO, ILL., *January* 2, 1885.

$150,000. Received of Samuel M. Nickerson, one hundred and fifty thousand dollars, being his subscription to the purchase of Chicago and Great Southern railroad securities, &c., as per subscription paper dated Chicago, January 2, 1885.

(Signed) H. H. PORTER."

1874 *Extract from Letter of Porter to David Dows of November* 13 *or December* 3, 1884.

"To such an extent am I convinced of coming improvement that I have bought a little railroad in Indiana, the same one that Mr. Bishop came out and went over, and that he and Mr. Brewster in a conversation I had with them last summer concluded it was not worth while to bother with. It is small, only seventy-seven miles long at present, but I expect — to grow up into a railroad of about one hundred and fifty miles. It is a coal road, and owns considerable coal lands and one coal mine. The whole property I do not expect will cost over $750,000. We buy all the first-mortgage bonds for not to exceed $400,000, and we buy a second lien on those bonds for $240,000, they, the bonds, being put up as collateral, first for the $400,000, and afterwards for the $240,000. The parties give us a good guaranty that all the liens of every name and nature ahead of the bonds shall not cost us to exceed $100,000, and we agree if they cost less that they shall have the benefit, and if they cost more they are to pay it.

This makes a total, as stated above, of, say, $750,000. The parties owning the indebtedness of $250,000 subscribed this sum towards the purchase. Myself and associates subscribed the other $500,000, and the subscribers of the $250,000 make a contract with us that if there is any loss in the venture they will contribute the proportion of that loss which their interest bears to the whole purchase-price, or, in other words, one-third. They, however, agree that any profit in the venture over and above giving them their $250,000 and interest at six per cent. shall belong to the parties subscribing $500,000 of money.

Confidently I will say to you that Mr. S. M. Nickerson takes $150,000 of this investment, I take $200,000, and other parties here want $50,000, leaving $100,000 that I am willing to take myself or place here; but if you and Mr. Flower, or either of you, would like the whole or any part you can have it, and I want you both to take your own choice, unbiased by my recommendation. I would like to have you show this letter to Mr. Brewster and Mr. Bishop when you happen to meet them, because I want them to know just exactly what I have done. I think I have not misunderstood them in their view that it was a bad time, and under the circumstances they did not wish to go into it.

My intention is to make it a coal road. My general plan, believing that the road will grow up into a very active one within a few years of coal traffic, is to foreclose the mortgage and reorganize it into a new company. We shall then own the road without any securities upon it. When we have done that we put a mortgage on of $15,000 per mile, running fifty years, at six per cent., with the right to add $5,000 per mile of these bonds for equipment, and $7,500 per mile for any double track that may be required. As we sell these bonds, which I mean to make a first-class bond, I shall put away in a trustee's hands two years' interest, so that we may have that on hand whilst we are progressing with our work, and not be tempted to pay interest money out of earnings before we can afford it. Then I propose to use about $100,000 of the proceeds of the bonds in improving the present road, and the balance will go to the construction of a new road from its present terminus towards Brazil. 1875 In this way we shall always have money on hand to pay for the road we build, on which we shall in turn get new bonds to be sold ahead of further expenditures.

The road now runs from Fair Oaks, on the Louisville, New Albany and Chicago railroad, to Yeddo, in Fountain county, Indiana. Mr. Bishop has been over it and can show you where it is. It seems to be a road that, in my opinion, can be made to earn seven per cent. on $40,000 per mile within, say, three years.

If you want to know more about it I shall be glad to give you any information you ask."

Extract from Letter of Porter to R. M. Hoe, Account of David Dows, Dec. 3rd, 1884.

" Your note is received. Please say to Mr. Dows that I think he is wise not to bother himself with that new investment, although I shall be disappointed if it is not very profitable. I wrote him, as I always shall about these things, with a remembrance of his friendship and sustaining of me when I needed it, and that he may always feel that I would like to have him with me when I see an opportunity of this kind, when he knows I want him to do just according to his own inclination. This matter will not be closed until the first of January, and, although the subscription will be filled, I shall take so much personally that if he wants some part of it on or before that time and will let me know I shall be entirely willing to let him have it."

Letter of Hillard for Porter to Henry Seibert, December 30th, 1884.

" DECEMBER 30, 1884.

Mr. Henry Seibert, Warren street, New York city:

Mr. Porter requests me to write to you and state that he has arranged to make his trip over the Chicago & Great Southern, leaving here on January 7th next, and he would be glad if you could be here that day to go with him. Of course it is possible that this date may be changed in consequence of the weather, but should that be the case, he will advise you by telegraph in time to prevent you from starting. Unless you receive such message you will understand that they will start on the 7th."

Letters of John C. Bullitt, A. W. Hendricks, and Drexel, Morgan & Co. About Title of Railroad Property and Mortgages.

Solicitor for complainant offered in evidence the following letters in connection with the testimony of Mr. Porter:

"Law offices, 32 South Third street.
PHILADELPHIA, *May 19th*, 1883.

Messrs. Drexel, Morgan & Co.

GENTLEMEN: I have received from Mr. Hendricks the supplemental mortgage to John C. New, trustee, dated April 9th, 1883, 1876 and I enclose it herewith. I also send you copies of letters of Mr. Hendricks to me, dated April 16, 1883, and May 16, 1883, in which he expresses the opinion that the consolidation between the Chicago & Great Southern Railway Co. and the C. & B. C. R. R. Co. has been legally effected, and that the supplemental mortgage, together with the original mortgage to John C. New, trustee, constitutes a valid mortgage on the first division of the road of the Chicago & Great Southern Railway Company.

I consider that the matter is now in satisfactory shape.

Mr. Hendricks' bill, which is enclosed, I consider a reasonable one under the circumstances. Mine I also enclose herewith.

Y'rs truly, JOHN C. BULLITT.

P. S.—I take it for granted you have reserved the money from Crawford to pay these bills."

Stamped: "Received May 22, 1883."

Letter of Hendricks to Bullitt, May 16, 1883.

INDIANAPOLIS, IND., *May* 16, 1883.

John C. Bullitt, Esq., Philadelphia, Pennsylvania.

DEAR SIR: On April 16th I wrote to you to the effect that Mr. Crawford had effected a consolidation of the C. & G. S. R'y Co. and the C. & B., C. R. R. Co. in a form that I thought legally sufficient, and that when the consolidated company should make and place on record the supplemental mortgage formerly spoken of it, together with the original mortgage to John C. New, would constitute a valid legal mortgage on the line of road described in the instrument.

Mr. Crawford has sent this supplemental mortgage, and I herewith forward it to you. I think it sufficient for the purpose intended.

As my services in the matter seem to be now ended, I take the liberty to enclose the bill of my firm for the services. This matter occupied so considerable a portion of my time in the months of December and January, besides odd occasions in the subsequent months, that I hope Messrs. D., M. & Co. may regard the bill as reasonable. I think, perhaps, if you knew the amount of time that this matter actually occupied me, you would suppose the charge moderate, irrespective of the magnitude of the interests involved in it.

Yours very truly,
(Signed) A. W. HENDRICKS.

INDIANPOLIS, IND., *April* 16, 1883.

John C. Bullitt, Esq., Philadelphia, Pennsylvania.

DEAR SIR: Your letter of the 13th, relating to the Crawford business, is received. A week or so ago Crawford sent me the consolidation papers and a draft of deed of further assurance. As to the former, I thought them sufficient, and, pursuant to the request of Mr. Crawford, caused the articles of consolidation to be filed in the

1877 office of the secretary of state. As to the deed of further assurance, I suggested some modifications, and wrote to Mr. Crawford that, if these were made and the deed recorded and a certified copy of it sent to me, I would give it to you as my opinion that the mortgage and deed of further assurance created a legal mortgage upon the first division of the road. When I receive the copy I will write you to the effect indicated.

Very truly,

A. W. HENDRICKS.

Drexel, Morgan & Co., Wall St., corner Broad, New York.

NEW YORK, *May* 22, 1883.

John C. Bullitt, Esq., 32 South 3rd St., Philadelphia, Pa.

DEAR SIR: We to-day received your favor of 19th inst., enclosing copies of letters of Mr. Hendricks; also bills of Mr. Hendricks and your good self.

Your letter also covered the supplemental mortgage to John C. New, trustee. Kindly say, if it is in order, why you do not have it recorded and lodged with the trustee.

Yours truly,

—— ——.

Law offices, 32 South Third street, Chicago & Great Southern Railway Co.

PHILADELPHIA, *Jan.* 1*st*, 1883.

Messrs. Drexel, Morgan & Co.

GENTLEMEN: As a result of my correspondence with A. W. Hendricks, Esq., of Indianapolis, for his opinion in regard to the validity of the mortgage on the northern division of the Chicago & Great Southern Railway Co. for $2,000,000, I would make this report:

The small map enclosed, *which* while not drawn upon a scale, will give you a general idea of the status of the mortgage and the construction of the road.

The mortgage describes the northern division of the Chicago & Great Southern Railway Company as extending from Brazil, in Clay county, through the counties of Parke, Fountain, Warren, Benton, Newton, and Jasper, to its junction with the Louisville & Chicago Railway Company. The mortgage does not cover any part of the line constructed south of Attica, as the title to that part of the line is vested in the Chicago & Block Coal. Co. In Mr. Hendricks' opinion the Chicago and Great Southern Railway Co. does not possess the power to construct its line in Jasper county, but as the Chicago & Block Coal Co. has the power to locate part of its line in Jasper county a *construction* between the Chicago & Block Coal Co. and the Chicago & Great Southern Railway Co., and the execution of a deed of assurance to the trustee of the mortgage by the consolidated company, will put the whole line of road, from the junction with the Louisville, New Albany & Chicago railway, in Jasper county, to Brazil, in Clay county, under the lien of the mortgage. When this has been done, should no further progress be made in the completion of the line—

The length of road with track laid will be	49.8	miles
The length of road with no track laid will be	28.54	"
	78.34	miles.

1878 In the present status of the Chicago and Great Southern Railway Company the mortgage covers road with track laid 28.4 miles. My information in regard to length of road and track laid is derived from a letter from Mr. Roswell Miller to Mr. Hendricks.

The right of way paid and unpaid for, acquired and to be acquired, by the Chicago and Great Southern Railway Company has been examined by Mr. Roswell Miller, who has already, I believe, made a statement to you on this subject. I send you, however, a copy of his statement, with three maps, explanatory of the examination made by him on this subject.

The judgments against the Chicago and Great Southern Railway Company appearing unsatisfied of record on the searches obtained amount to $2,840.95. Two of these, amounting to $2,567.90, Mr. Crawford states, have been paid. On the certificate of search from Benton county is endorsed a statement that one of these, a judgment for $2,005.90, had been paid. The remaining judgment is a right of way claim where an appeal is pending.

The only mortgage on the searches produced against the Chicago and Great Southern Railway Company is the mortgage to John C. New, trustee, for $2,000,000.

On the searches produced the only suit pending is the one relative to the right ot way claim already referred to, but I do not find any searches for suits in Jasper or Newton county. Mr. Crawford states that there are no suits pending in either of these counties, and that the searches produced show everything in the way of suits, judgments, and mortgages against the Chicago and Great Southern Railway Company.

In regard to the coal lands and contracts, no information has been furnished upon which any opinion can be given.

Mr. Hendricks thinks it safe to assume that the foreclosure proceedings and sale under which the Chicago and Block Coal Company was organized are valid. The searches show this company to be free from suits, judgments, and mortgages against it, except a judgment in Clay county for costs, $9.55, and the railroad tax in certain townships of Fountain county, amounting to $168.28.

I understand that the arrangements with Messrs. McCormick & Dull bind them to transfer the securities of the Block Coal Company, so soon as the money is paid them under the contract. Upon this being done a consolidation can then be effected between the Chicago and Great Southern Railway Company and the Block Coal Company and then the right to complete the line from Fair Oaks Junction to Brazil will be vested in the Chicago and Great Southern Railway Company, and by proper conveyancing the lien of the mortgage to John C. New, trustee, can be extended to the whole line.

Mr. Crawford requests me to speak of the apparent defects as to the right of way. I do not suppose they will present any serious difficulty. It may require some attention to have them perfected, but they are not more serious than is found in pretty much all railroad construction.

Yours truly, JOHN C. BULLITT.

I have handed to Mr. Crawford the original and other papers which have come from him.

1879 *Letter of R. M. Hoe to Porter of January* 16, 1885.

"NEW YORK, *Jan.* 16, 1885.

"H. H. Porter, Esq., Chicago, Illinois.

"MY DEAR SIR: I should have written to you before this in the matter of your new railroad in Indiana had not Mr. Dows been out of town. He returned Monday last from Lakewood, N. J., where he had been spending two weeks, and I reminded him of your letter of December 3rd in regard to the subscription to this investment, and he says if it is not too late (although it is considerably beyond the date on which you stated the list would be closed—January 1), and it will not inconvenience you in any way, you may put him down for $25,000 (twenty-five thousand dollars). Please let Mr. Dows know at what time and how you would like the money.

"I met Mr. Henry Seibert a day or two since, and was glad to learn from him that he had recently gone over the road and fully confirming all your views as to the ultimate success of the undertaking.

"Very truly yours, RICH. M. HOE, JR."

Extract from Letter of Porter to Dows, January 20th, 1885.

"Mr. Hoe's letter of January 15, 1885, saying that you would like to take twenty-five thousand dollars in our syndicate for the purchase of the Chicago and Great Southern railroad is received, and I take pleasure in putting you down for that amount. Within a few days I will send you a copy of the subscription paper; it is being printed now, and will be an agreement of purchase, and as we do not need the money for a short time you can send it to me at your convenience. When you send it I would like to have you add to it the interest at six per cent. from January 15 until the 22d, as I have considered the money on deposit by you subject to my order after that date.

"My only reason for asking this is that all subscriptions may be exactly alike, payment being due on the 15th of January. It is purely a technical point, and I am looking after technical points now; I had not been before that time.

"When you get the subscription paper, if there is anything in it by which you would prefer not to subscribe, please do not feel that you must; I want you, Mr. Dows, to do just exactly what you wish to in this matter. The aggregate subscription is a hundred thousand dollars more than the obligations we have assumed, so as to leave us money in hand for any little thing it will be wise to do pending the foreclosure."

1880 EXHIBIT M. John Gray, special commissioner.

Crawford's Account with First National Bank.

Loan account, Henry Crawford with First National Bank, Chicago.

1881.		
Mar. 7		$50,000
“ 7		100,000
“ 9		25,000
“ 25	F. F. Lacey	40,000
“ 25	“ “	50,000
May 2	W. A. Starin	65,000
“ 2	“ “	65,000
“ 12		50,000
June 16		50,000
“ 23		6,000
		501,000
June 28	Paid off	355,000
		146,000
Aug. 20	Fresh loan	10,000
		156,000
Aug. 24	Paid off	140,000
		16,000
Sept. 17	Paid off	6,000
		10,000
Nov. 11	Fresh loan	20,000
Dec. 8	“ “	40,000
		70,000
Dec. 8	Paid off	20,000
		50,000
1882.		
Jan'y 16	Fresh loan	55,000
		105,000
Jan'y 24	Paid off	40,000
		65,000
Mar. 20	Fresh loan	50,000
		115,000
April 3	Paid off	40,000
		75,000
April 7	Fresh loan	20,000
May 29	“ “	45,000
July 28	“ “	5,000
Sept. 9	“ “	70,000
“ 9	“ “	11,000
		226,000
Sept. 27	Paid off	71 76
		225,928 33
Sept. 27	Fresh loan	8,000
	Amount up	233,928 33
1883.		
	Amount up	$233,928 33
Feb. 2	Fresh loan	180,000
“ 2	“ “	70,000
“ 2	“ “	19,000
“ 2	“ “	34,928 33
		537,856 66
Feb. 2	Paid off	233,928 33
		303,928 33
Oct. 22	Paid off	296
		303,632 33
1884.		
Mar. 1	Paid off	70,000
		233,632 33
1885.		
Jan'y 16	Fresh loan	297,393 17
		531,025 50
Jan'y 16	Paid off	233,632 33
		297,393 17

Note of Crawford to First National Bank.

$297,393.17. CHICAGO, *January 15th*, 1885.

On demand, after date, I promise to pay to the order of the First National Bank of Chicago, at their office, two hundred ninety-seven thousand three hundred ninety-three and $\frac{17}{100}$ dollars, for value received, with interest at the rate of six per cent. per annum, after date, having deposited with said bank as collateral security, for payment of this or any other liability or liabilities of ours to said bank, due or to become due, or that may be hereafter contracted, the following property, viz:

Assignment of contract between myself and H. H. Porter and associates, dated Dec. 26, 1884.

The market value of which is now $——; with the right to call for additional security should the same decline; and on failure to respond this obligation shall be deemed to be due and payable on demand, with full power and authority to sell and assign and deliver the whole of said property, or any part thereof, or any substitutes therefor, or any additions thereto, at any broker's board, or at public or private sale, at the option of said bank, or its assigns, and with the right to be purchasers themselves at such broker's board or public sale, on the non-performance of this promise, or the non-payment of any of the liabilities above mentioned, or at any time or times thereafter, without advertisement or notice. And after de-
1881 ducting all legal or other costs and expenses for collection,
sale, and delivery to apply the residue of the proceeds of such sale or sales so to be made, to pay any, either, or all of said liabilities as said bank or its president or cashier shall deem proper, returning the overplus to the undersigned.

(Signed) HENRY CRAWFORD.

Geo. C. Kimball's Estimate of Cost of Railroad.

Estimate of cost of fifty-six miles of road from Fair Oaks to Attica.

Grading, $3,000 per mile, 56 miles	$168,000
5,000 tons of rails, averaging 56 lbs. per yard, $50 per ton	250,000
147,840 ties, 2,640 to the mile, 35 cents each	51,740
448,000 lbs. of spikes, at 3 cents	13,440
709,632 lbs. of splices, at 2½ cents	18,737
Track laying and surfacing, $400 per mile	22,400
Iron bridge over Wabash and masonry (approximate)	74,000
Approaches to the above	15,000
Iron bridge over creek north of Wabash river and approaches	12,000
Barnhart's trestle, 480 feet long	2,500
McLady's trestle, 1,065 feet	5,000
Davidson trestle, 446 feet	1,800
Schrœder's trestle, 267 feet	1,000
Pine Village bridge and approaches, 100 feet (approximated)	9,000

Bridge over Iroquois river	4,000
Culverts and cattle-guards	1,500
Depots and platforms	4,200
Approximate sidings, 6,000 feet	9,000
Water stations	3,000
21 miles, Attica to Yeddo	210,000
Total	$876,317

J. Q. Baird's Estimate of Cost of Road from Fair Oaks to Attica.

Fair Oaks to Goodland, 22 miles:

Grade, ave. ab't 6,000 yds., 132,000	$17,160
58,000 ties, @ 40	23,200
Bridging	5,000

Goodland to Oxford, 18 miles:

Grade 18,000 yds., @ 14	25,200
40,000 ties, @ 40	16,000
Bridging and culverts	4,500

Oxford to Pine Village, 5 miles:

Grading 5,000 yds., 16c.	8,000
13,000 ties, @ 40c.	5,200
Bridging and culverts	8,000

Pine Village to Wabash river, 11 miles grade:

400,000 yds., @ 16	64,000
Bridging, trestling, &c.	12,000
Wabash river stone-work	40,000
1,050 truss bridge, @ $38	39,900
4,660 tons rails, 52 lbs., @ 42	195,720
1,865 kegs spikes, @ $3.50	6,500
225 kegs bolts, 45	1,013
123 tons fish-plates, 42	5,160
56½ miles track-laying, $250	14,125
	$490,658

1882 UNITED STATES OF AMERICA, }
District of Indiana, } *ss:*

I, Noble C. Butler, clerk of the circuit court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of all that part of the record and evidence in the cause of Henry H. Porter *vs.* The Chicago & Great Southern Railway Company *et al.* relating to the petitions and claims of The Smith Bridge Company, The Pittsburgh Bessemer Steel Company, The Cleveland Rolling [Mill] Company, Crerar, Adams & Co., and Volney Q. Irwin, as fully as the same appears of record and on file in my office.

Witness my hand and the seal of said court, at Indianapolis, in said district, this 4th day of November, A. D. 1886.

[Seal Circuit Court of the United States, District of Indiana.]

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: Indiana C. C. U. S. No. 1280. Henry H. Porter, appellant, *vs.* The Pittsburgh Bessemer Steel Company (Limited), The Cleveland Rolling Mill Company, The Smith Bridge Company, Crerar, Adams & Company, and Volney Q. Irwin. Filed November 9, 1886.

120-649

Supreme Court U. S.
FILED.
DEC 16 1886
JAMES H. McKENNEY,
CLERK.

SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM, 1886.

HENRY H. PORTER, *Appellant*, *vs.* THE PITTSBURGH BESSEMER STEEL COMPANY (LIMITED); THE CLEVELAND ROLLING MILL COMPANY; THE SMITH BRIDGE COMPANY; [illegible], ADAMS AND COMPANY, AND VOLNEY Q. LEWIS.	**No. 1250.** *Five several appeals from the Circuit Court of the United States for the District of Indiana.*

SUBMITTED UNDER THE TWENTIETH RULE.

BRIEF IN BEHALF OF HENRY H. PORTER,
Appellant.

[illegible]

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1886.

HENRY H. PORTER, *Appellant*, *vs.* THE PITTSBURGH BESSEMER STEEL COMPANY (LIMITED); THE CLEVELAND ROLLING MILL COMPANY; THE SMITH BRIDGE COMPANY; CRERAR, ADAMS AND COMPANY, AND VOLNEY Q. IRWIN.	No. 1280. *Five several appeals from the Circuit Court of the United States for the District of Indiana.*

Brief in Behalf of Henry H. Porter, Appellant.

These five several appeals are presented on one record. By stipulation they are submitted under the Twentieth Rule of this Court. (Rec. p. 194.)

While the appeals are separate and several, the chief question involved is common to all of them.

The main question presented for decision is, whether claims accrued for *construction* of a railway,—regardless of any State statute providing for a lien in favor of mechanics, builders, and furnishers of materials,—have a lien upon the railway prior and paramount to the lien of a mortgage duly executed and recorded, and bonds issued thereunder, prior to the time when the claims for construction accrued.

The following order will be observed in the presentation of these appeals, viz:

First: A statement of the facts.

Second: Argument and citation of authorities upon points common to the five appeals.

Third: Argument and citation of authorities upon questions presented by the several appeals separately.

I.

STATEMENT OF FACTS.

1. In March, A. D., 1880, the Indiana and Chicago Railway Company was incorporated to construct and operate a railroad from a point on the State line of Indiana, in Lake County, to Attica, in Fountain County, Indiana.

William Foster was chief promoter of this enterprise, and was President of said company and its successor,—the Chicago and Great Southern Railway Company,—from the organization of the Indiana and Chicago Railway Company down to March 15, 1882.

From March, 1880, to June 23, 1881, Foster was the principal stockholder of the Indiana and Chicago Railway Company,—owning substantially all of the stock issued, excepting a few shares held by the other directors, and controlling the enterprise.

(Record pp. 308, 309.)

Prior to June 23, 1881, the work of construction and procurement of right of way had progressed so far as Foster could procure and pay for the same by issuing $50,250.00 par value of paid up capital stock of the company, of all of which said stock so issued Foster had on June 23, 1881, become the owner.

2. Prior to June, 1881, Henry Crawford purchased from A. J. Dull and Henry McCormick the entire capital stock of the Chicago and Block Coal Railroad Company, —consisting of 8,648 shares of stock. This company was organized and incorporated by the purchasers, at foreclosure sale, of the Indiana North and South Railroad, and then owned and operated a railroad extending south from Attica, through Veedersburg, in Fountain County, to Yeddo, about twenty miles in length. The company also had procured some right of way, and constructed some grade south of Yeddo in the direction of Brazil, Indiana.

The purchase price of the Chicago and Block Coal Railroad Company's stock was $200,000. It had cost much more than that to build the road. Crawford made a cash payment at the time he purchased the stock giving his notes for the residue, the stock remaining in pledge as a security for the payment of the purchase money notes. (Record pp. 637 to 648.)

3. On June 23, 1881, Foster sold to Henry Crawford 1,005 shares of the capital stock of the Indiana and Chicago Railway Company of the par value of $50,250 under a written contract by which Foster guaranteed Crawford that the stock thus sold by him to Crawford was all of the capital stock of the company, excepting

$10,000 par value still held by Foster, and that the company was under no obligation to issue any more stock except a small amount for rights of way contracted to be paid for in stock. In connection with this contract a certificate of the Secretary of the Indiana and Chicago Railway Company was delivered to Crawford showing the exact amount of capital stock then outstanding. This contract and certificate appear in the record on pages 859, 860 and 861.

The $10,000 par value of stock retained by Foster on and after June 23, 1881, had been issued to him in payment of his salary and personal expenses in connection with the enterprise.

On June 23, 1881, the Indiana and Chicago Railway Company had no assets excepting the grade and right of way that had been constructed and procured with the $50,250 par value of its capital stock, and some $50,000 of aid voted by certain townships along the line, but not then collected.

4. Foster remained President, and his Board of Directors remained Directors, until March 15, 1882.

Immediately after his purchase of the stock on June 23, 1881, Crawford,—without any definite contract with the Indiana and Chicago Railway Company,—began furnishing from his own means the money and material with which the work of construction was carried on.

(Record pp. 314 to 323.)

5. On July 14, 1881, the Board of Directors of the Indiana and Chicago Railway Company, at a special meeting, adopted a resolution changing the name of the Indiana and Chicago Railway Company to "Chicago and Great Southern Railway Company." (Record p. 874.)

On October 29, 1881, the Board of Directors of the Chicago and Great Southern Railway Company adopted the resolutions authorizing the execution of the mortgage and the issuing of the bonds involved in this litigation. (Record p. 876.) At that time Henry Crawford was not a director or officer of the company. The mortgage and bonds bear date November 1, 1881. The resolutions authorize the issue of Two Million Dollars of bonds, and the mortgage secures that amount.

6. Between June 23, 1881, and January 1, 1882, Crawford furnished of his own means over $300,000.00, (Foster's Ev. Record pp. 314 to 322. Crawford's Ev. Record pp. 637 to 641.) which was paid out for work and material used in the construction of the road between Attica and a junction with the Chicago Air Line Road at Fair Oaks, northwest of Rensselaer, in Jasper County, Indiana. In addition to the means so furnished and advanced Crawford had, prior to January 1, 1882, paid out of his own means, to Dull and McCormick upon the purchase of the stock of the Chicago and Block Coal Railroad Company the sum of $85,000, leaving $115,000 and all interest still unpaid. (Record p. 666.)

7. From June 23, 1881, forward, Foster and his Board of Directors looked to Henry Crawford to furnish the money and material with which to carry on the work of construction. (Foster's Ev. Record pp. 314 to 322.)

8. In obedience to the resolutions adopted by the Board of Directors of the Chicago and Great Southern Railway Company on October 29, 1881, the mortgage or deed of trust was prepared and executed, and was duly

recorded in the several counties along the line of the railroad in the month of November, 1881.

(Record pp. 754, 755.)

Henry Crawford prepared or superintended the preparation of the mortgage and bonds.

For some unaccountable reason this mortgage is set forth at large three times in the record.

(Record pp. 5 to 11, 747 to 754, and 878 to 885.)

9. About the last of December, 1881, William Foster, then President of the Chicago and Great Southern Railway Company, executed and delivered to Henry Crawford,—the actual delivery being made to W. A. Starin, an employee of Crawford, at Crawford's office in Chicago, Crawford then being absent,—1,000 bonds each for $1,000, making the amount of $1,000,000, the payment of which bonds, and interest coupons thereto attached, is secured by the said first mortgage or deed of trust of the Chicago and Great Southern Railway Company. (Record pp. 640, 642, 675.)

In connection with the delivery of said $1,000,000 of bonds said William Foster also delivered to Crawford, per said W. A. Starin, the following memorandum in the handwriting of said William Foster, to-wit:

" Memorandum of agreement between the Chicago and Great Southern Railway Company and Henry Crawford as to applying the proceeds of an issue of one million dollars of bonds under date of November 1, 1881.

First. In payment of Block Coal road purchased by said Crawford and the contract assigned by him to the Chicago and Great Southern Railway company, with which it is to be consolidated, as provided by law.

Second. To reimburse said Crawford for money advanced and to be hereafter advanced for construction and equipment of the Chicago and Great Southern Railway, which the bills of purchase and vouchers for the necessary payments shall be the evidence of expenditures made.

Third. Any balance from the proceeds of the first issue or any subsequent issue shall be used and applied to the extension and developement of the line of road covered by the mortgage of November 1st, 1881.

Fourth. It is understood and agreed that said Crawford is to furnish the necessary amount of money to pay the debts contracted since the first of July, 1881, and to complete grading and superstructure, and to furnish and equip the line of road from junction with Air Line to Attica as fast as the work can be done."

(Record p. 864.)

Prior to the delivery of these bonds by Foster to Crawford, Crawford had assigned and transferred his contract with Dull and McCormick for the purchase of the stock of the Chicago and Block Coal Railroad Company to the Chicago and Great Southern Railway Company.

When these bonds were delivered to Crawford he had no official connection with the railway company, but was the owner of $50,250 par value of the capital stock of the company and had furnished a large amount of cash which had been paid out by the company upon construction as proved by the testimony of Foster and Crawford above cited.

10. In December, 1881, Crawford's note to Dull

and McCormick for the stock of the Chicago and Block Coal Railroad Company matured and was unpaid. Crawford negotiated with Dull for an extension of time on the note. Dull finally agreed to extend the time if Crawford would deposit with him as additional collateral every dollar of the then issued bonds of the Chicago and Great Southern Railway Company, and every dollar of stock he had bought of Foster, and would, by an agreement with John C. New, Trustee in the Chicago and Great Southern Railway Company first mortgage or deed of trust, prevent the issue of any more bonds without Dull's written consent.

This arrangement was carried out. On January 27, 1882, Crawford delivered to Dull all the stock he had bought from Foster, and the 1,000 Chicago and Great Southern Railway Company bonds delivered to him by Foster, and procured from John C. New, Trustee, the following paper, which was also delivered to A. J. Dull, viz:

"I, John C. New, of the City of Indianapolis, in the State of Indiana, do hereby make known that as trustee in certain mortgage or deed of trust, bearing date the 1st day of November, 1881, made and executed by the Chicago and Great Southern Railway Company, a corporation of the State of Indiana, to me as trustee, covering the railroad and other property of said company to secure a certain issue of first mortgage bonds of said company aggregating the sum of two millions of dollars, I have as such trustee certified for issue one thousand of said bonds, of one thousand dollars each and no more, and at the request of Henry Crawford, Esq , of Chicago, I agree that I will as such trustee certify no more of said bonds without the consent in writing of A. J. Dull, Esq., of Harrisburg, Pa.

Dated at New York, January 27th, 1882.

JNO. C. NEW, *Trustee.*"

(Record p. 902.)

At the time the Chicago and Great Southern Railway Company's bonds and stock were so pledged by Crawford to Dull and McCormick the balance due on the purchase of the Chicago and Block Coal Railroad Company's stock was $115,000, and all accrued interest,—Crawford having paid on said purchase $85,000 out of his own means. This payment of $85,000 is not included in the cash furnished by Crawford for construction of the new road north from Attica.

11. In February, 1882,—the work of constructing the railway still being in progress, and Crawford still continuing to furnish the money used in the prosecution of the work without any contract with the company,—Crawford requested Foster and his Board of Directors to execute and enter into a construction contract with him, hoping that such a contract would help him in his attempts to negotiate the bonds. At the same time Crawford sent to the Board of Directors a written construction contract which he desired the Board to execute. The Board met on February 7, 1882, and rejected the proposed construction contract. (Record p. 877.)

Upon learning the result of this meeting of the Board of Directors Crawford procured the President, Foster, to call another meeting, which Crawford attended in person, it being the first meeting of the

Board of Directors at which he was present. The meeting was held at Goodland on March 15, 1882. At that meeting Crawford became satisfied that Foster would prevent any contract or settlement from being made with him unless he, Crawford, would buy the $10,000 par value of the capital stock of the company still held by Foster. Crawford therefore purchased Foster's remaining $10,000 of stock and he and Foster entered into a contract in writing by which Crawford became the owner of all the remainder of the capital stock of the company. (Record p. 318.)

Henry Crawford then executed the following assignment or transfer of stock:

I, Henry Crawford, hereby assign and transfer the number of shares of capital stock of the Chicago and Great Southern Railway Company, set opposite the names of the following persons, to each such person one share of stock:

Henry Crawford, Jr.
William A. Starin.
D. H. Conklin.
F. F. Lacey.
H. Moore.
G. W. McDonald.
D. J. Lyon.
H. Meiselbar.

Witness my hand, March 15, 1882.

HENRY CRAWFORD.

(Record p. 862.)

On the same day,—March 15, 1882,—Foster and his Board of Directors, at the request of Henry Crawford resigned, and Crawford caused himself and the several persons named in the assignment and transfer of stock above set forth to be elected Directors of the Chicago and Great Southern Railway Company.

On that day Henry Crawford was elected President of the railway company, and remained its President four days, until March 18, 1882, at which time he ceased to be President and Director, and held no official connection with the company from that time forward until April or May, 1883, when he was again elected Director and President.

12. On March 18, 1882, the new Board of directors of the Chicago and Great Southern Railway Company met at Chicago, and passed a resolution approving the mortgage to New and ordering it spread of record on the minute book of the company. At the same meeting the Board of Directors entered into a construction contract with Henry Crawford. (Record pp. 878 and 885 to 888.)

Between June 23, 1881, the date of Crawford's first purchase of stock from Foster, and March 18, 1882, the date of Crawford's construction contract, he had paid out of his own means for labor and material used in the construction of the Chicago and Great Southern Railway north from Attica the sum of about $400,000. He had also paid out of his own means upon purchase of the stock of the Chicago and Block Coal Railroad extending south from Attica $85,000.

13. The Chicago and Block Coal Railroad Company and the Chicago and Great Southern Railway Company were consolidated in the spring of 1883 under the name of the "Chicago and Great Southern Railroad Company." (Record p. 157.)

bonds as collateral security. Drexel, Morgan & Co. were to appoint, and did appoint, an agent to superintend the expenditure of all the money advanced by them, the money only to be paid out upon drafts drawn by Crawford and approved and counter-signed by Drexel, Morgan & Co.'s agent.

Under this contract Drexel, Morgan & Co. advanced $350,000. On January 5, 1883, they paid to Dull and McCormick the entire balance due on the purchase of the Chicago and Block Coal Railroad Company's stock, the amount so paid being $132,379.99. And received from Dull and McCormick all of the stock and bonds held by them as collateral. Drexel, Morgan & Co. did not receive these bonds and this stock from Henry Crawford but received them from Dull and McCormick. Henry Crawford never has had possession or control of these bonds or this stock from January 27, 1882, when he pledged them to Dull and McCormick, up to this time. (Record pp. 643 to 646.)

The remaining $217,620 was paid by Drexel, Morgan & Co., through their agent, directly upon and for labor and material used in the construction of the railway in pursuance of the above contract. This $217,620 was paid by Drexel, Morgan & Co. at various times between January 5, 1883, and September, 1883.

During the last named period Crawford,—in addition to all of his own means theretofore expended in the work of construction, and in addition to the money derived from the Drexel, Morgan & Co. loan,—paid out of his own means much more than $50,000 for labor and material used in the construction of the railway between Oxford and Attica. (Record pp. 643 to 645.)

From January 5, 1883, to September, 1883, the contractors, sub-contractors, furnishers of materials, and laborers, were informed and understood that the money from time to time paid to them during said period was mainly derived from a loan negotiated upon the mortgage bonds of the railway company. Each of these five appellees knew of the pledge of these bonds to Drexel, Morgan & Co. on this loan, and knew that they were getting part of the money loaned by Drexel, Morgan & Co. (Record pp. 651, 652.)

16. After the Drexel, Morgan & Co. loan was exhausted, the work of construction continued—Crawford furnishing the money that was paid for labor and material,—until about the middle of February, 1884, when the new road was so far constructed as to enable trains to run from Attica to the junction with the Chicago Air Line Railway at Fair Oaks in Jasper County, Indiana.

On February 18, 1884, Crawford submitted to the Board of Directors a report showing the then condition of the work, and asking the Board to issue to him, in addition to the $1,000,000 of first mortgage bonds theretofore issued, a further sum of $200,000 of first mortgage bonds, and $1,200,000 of capital stock, and also $1,200,000 of income bonds, as a payment to him on account. (Record pp. 895, 896.)

On the same day the Board of Directors passed the following resolution:

"*Resolved*, That as a payment on account for the work done and materials furnished up to the present time under such construction contract, there be allowed and paid to the contractor, or order, the sum of two hundred thousand dollars first mortgage bonds, (in addition to the one million dollars heretofore appropriated,) and also ($1,200,000) one million two hundred thousand dollars of income bonds, and ($1,200,000) one million two hundred thousand dollars in the common stock fully paid of this company. The proper officers of the company to execute the foregoing resolution and take the proper vouchers for all payments."

(Record p. 896.)

No income bonds were ever issued by the Chicago and Great Southern Railway Company. The length of the entire railway from Fair Oaks to Yeddo is eighty miles.

On May 8, 1884, at the request of Henry Crawford, the Board of Directors adopted a resolution providing for an exchange of the old Chicago and Block Coal Railroad Company stock and the old Indiana and Chicago Railway Company stock for new stock of the consolidated Chicago and Great Southern Railway Company.

At the same meeting of the Board, the Directors passed a resolution that in addition to the consolidated stock to be issued in exchange for the old stock of the original companies, the Secretary should issue and deliver to the contractor additional new stock as payment under the construction contract, so as to make the total consolidated stock outstanding amount to $1,200,000 par value. (Record p. 897.)

This exchange of stock was made, and enough additional new stock of the consolidated company was issued to make the total Chicago and Great Southern Railway Company's stock outstanding equal $1,200,000 par value, all of which stock so issued was delivered to Drexel, Morgan & Co. under their contract of pledge under which they had advanced the $350,000 above mentioned. This exchange of stock is evidenced by correspondence set forth in the record. (Record p. 909.)

When Drexel, Morgan & Co. paid Dull & McCormick on January 5, 1883, Dull, upon delivering the stock and bonds to Drexel, Morgan & Co., also delivered to them the following consent that New, Trustee, might certify and issue more of the mortgage bonds upon consent of Drexel, Morgan & Co., viz:

John C. New, Trustee:

I hereby consent to the issue and certification of the remaining $1,000,000 of Chicago and Great Southern Railway bonds whenever you are so requested to do by Drexel, Morgan & Co.

NEW YORK, Jan. 5, 1883.

A. J. DULL.

(Record p. 902.)

The additional $200,000 of bonds Crawford was authorized to receive by the resolution of the Board of Directors of February 18, 1884, hereinabove set forth, were issued. Drexel, Morgan & Co. permitted New, Trustee, to certify them and they were delivered by Crawford to Drexel, Morgan & Co. in August, 1884.

(Record pp. 910, 911.)

17. While the construction of the Chicago and Great Southern Railway was in progress Henry Crawford became indebted to the First National Bank of

Chicago in the sum of about $300,000, about two-thirds of which money obtained by Crawford from said bank was by him expended in the construction of the Chicago Air Line Railroad, and about one-third of said money obtained from said bank was by Crawford paid out and expended in the construction of the Chicago and Great Southern Railway. (Record pp. 661 and 697.)

While the bonds and stock of the Chicago and Great Southern Railway Company were held in pledge by Drexel, Morgan & Co., as hereinbefore set forth, Crawford gave to the First National Bank of Chicago a second pledge of said bonds and stock to secure the payment of his indebtedness to said bank, he already having pledged to the bank certain other securities and property as collateral.

Crawford's notes to Drexel, Morgan & Co. matured and were unpaid. Drexel, Morgan & Co., under the power given them in their contract with Crawford of January 5, 1883, advertised the pledged securities,—the bonds and stock,—for sale on June 2, 1884. Crawford immediately negotiated for an extension of time, which was granted by a contract dated May 27, 1884, which postponed the sale to June 20, 1884. In making up the record the Clerk has inadvertently omitted this contract and it does not appear in the printed record. It was in the printed evidence submitted to the Circuit Court and reads as follows:

COMPLAINANT'S EXHIBIT 8.

JOHN GRAY, *Special Commissioner.*

This agreement between Drexel, Morgan & Co. of the one part and Henry Crawford of the other part, witnesseth:

Whereas, Drexel, Morgan & Co., under their power and authority conferred upon them by an agreement between above parties, dated the 5th day of January, 1883, have given notice to Henry Crawford of their purpose to sell the securities mentioned in said agreement, at the Exchange Sales Room, No. 111 Broadway, in the city of New York, on 2d day of June, 1884; and

Whereas, Henry Crawford has requested Drexel, Morgan & Co. to postpone the said sale until the 20th day of June, 1884.

Now, therefore, This agreement witnesseth:

1st. That Drexel, Morgan & Co. do hereby consent and agree to adjourn the said sale from the 2d day of June, 1884, to the 20th day of June, 1884, to be held at the same place.

2. In consideration of above adjournment Henry Crawford hereby agrees that the sale shall be made on the 20th day of June, 1884, at 12 o'clock, noon, at the said Exchange Sales Room, No. 111 Broadway, in the city of New York, without any let, hinderance or objection upon his part.

Witness our hands this day of May, 1884.

DREXEL, MORGAN & CO.
HENRY CRAWFORD.

Witness: WALTER B. HOWE.

In the meantime Samuel M. Nickerson, President of the First National Bank of Chicago,—which held the second pledge of these securities held by Drexel, Morgan & Co.,—and Henry H. Porter, a Director and stockholder of the said First National Bank of Chicago, entered into negotiations with Drexel, Morgan & Co., Chicago in the sum of about $300,000, about two-thirds of which money obtained by Crawford from said bank was by him expended in the construction of the Chicago Air Line Railroad, and about one-third of said money obtained from said bank was by Crawford paid out and expended in the construction of the Chicago and Great Southern Railway. (Record pp. 661 and 697.)

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DREXEL, MORGAN & CO.
HENRY CRAWFORD.

Witness: WALTER B. HOWE.

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These negotiations resulted in a contract between Drexel, Morgan & Co. and Crawford, by which the time of payment was extended for sixty days from and after June 20, 1884, and a contract between Nickerson and Porter and Drexel, Morgan & Co., by which Nickerson and Porter agreed to buy from Drexel, Morgan & Co. the pledged securities and pay Drexel, Morgan & Co. their claim in full with interest therefor, if Crawford should fail to pay Drexel, Morgan & Co. his indebtedness at the expiration of the sixty days. These two contracts, both dated June 25, 1884, appear in the record. (Record pp. 906 to 909.)

Crawford failed to pay his indebtedness to Drexel, Morgan & Co. within the sixty days from and after June 20, 1884,

Prior to January 15, 1885, Henry H. Porter purchased Samuel M. Nickerson's interest in the contract between Nickerson and Porter, and Drexel, Morgan & Co. of June 25, 1884.

On January 12, 1885, Henry H. Porter paid Drexel, Morgan & Co. $392,363.24 by drafts, and sent them the drafts inclosed with a letter in which Mr. Nickerson concurs. (Record pp 921 and 922.)

Drexel, Morgan & Co. received their payment in full and delivered the bonds and stock to Henry H. Porter, accompanying the delivery with a letter giving in detail a list of the stock, bonds, notes, agreements and papers held by Drexel, Morgan & Co. as collateral to their loan. (Record pp. 922 and 923.)

One of the papers inclosed by Drexel, Morgan & Co. to Henry H. Porter is a consent signed by Drexel, Morgan & Co. authorizing John C. New, as Trustee, to certify the remaining uncertified $800,000 of first mortgage bonds whenever so requested to do by Henry H. Porter. (Record p. 902.)

Henry H. Porter associated with himself certain other persons, who entered into a certain subscription, or syndicate agreement, for the purpose of buying in the road and reorganizing, completing and extending it. By this syndicate agreement it is provided that Porter shall go on *in his own name* and foreclose the mortgage, sell the property, reorganize the company and convey the property purchased under the foreclosure to the reorganized company. The agreement is in effect an agreement by the subscribers to pay so much money for so much stock and bonds of the new company organized after the foreclosure and sale by Porter. It gives Porter absolute power over, and control of, all the bonds, and gives him full authority in his own name to foreclose the mortgage, reorganize the company upon foreclosure purchase and conduct and control the new enterprise. (Record pp. 918 to 920.)

On December 26, 1884, Henry H. Porter and Henry Crawford entered into a contract under which Porter, and the syndicate represented by him, purchased and became absolute owner of any and all right Crawford might have *to redeem the bonds and stock* from Porter by paying to him the amount he had paid to Drexel, Morgan & Co. This contract recognized Crawford's right to redeem the bonds and stock upon payment to

Porter of the amount Porter had paid Drexel, Morgan & Co., and probably exactly describes the legal situation. Drexel, Morgan & Co. had not sold the bonds and stock at public auction on notice, but simply had sold at private sale their debt against Crawford, and put Porter in their shoes as to the collaterals securing their debt. Crawford was willing that Porter should take bonds and stock in this way if he—Crawford—could still have a chance to protect his second pledge of them to the First National Bank. By this agreement Porter and associates fixed the ultimate price they were willing to pay for the bonds and stock, which price left a margin for the bank after paying off Drexel, Morgan & Co.

On the same day, and as a part of the same transaction, Henry Crawford, by a written assignment, transferred to the First National Bank of Chicago all his right, title and interest in and to the contract between himself and Porter last above mentioned, and all the rights, claims, demands, moneys and payments he—Crawford—might be, or become, entitled to by reason of and under the said contract.

These two contracts of December 26, 1884, simply constitute the method pursued in order to protect the First National Bank in its second lien upon the bonds and stock. They were entered into for the express purpose of securing to the bank any margin of value in the bonds and stock left after payment of the Drexel, Morgan & Co. debt. These two contracts appear in full in the record. (Record pp. 911 to 918.)

18. The amount of cash furnished by Mr. Crawford and expended in the construction of the railway

after the Drexel, Morgan & Co. loan was exhausted, and during the time the Drexel, Morgan & Co. loan was being used in construction, amounted to at least the sum of $250,000, in addition to the moneys Crawford had theretofore paid out upon said construction.

(Record p. 664.)

The paid pay-rolls and paid vouchers in evidence, but not copied into the record, show the total expenditure in the construction of the Chicago and Great Southern Railway of something over $1,000,000, all of which came from Crawford's private means and from the Drexel, Morgan & Co. loan, excepting only some $40,000 or $50,000 received from aid voted by some of the townships along the line of the railway.

(Record pp. 645 and 676 to 684.)

The mortgage bonds involved in this litigation represent this million dollars expended in construction, and all accrued interest thereon.

The railway from Yeddo to Fair Oaks was so far completed as to be opened for business sometime in April or May, 1884. The evidence does not disclose the exact date.

Prior to the appointment of a Receiver—October 28, 1884—the Chicago and Great Southern Railway Company did not earn sufficient earnings to pay its ordinary and necessary operating expenses.

No interest was ever paid on any of the mortgage bonds issued by the Chicago and Great Southern Railway Company. The interest coupons all remained attached to the bonds as originally executed and issued when the bonds were offered in evidence in this cause.

Henry Crawford has never received a dollar from the Chicago and Great Southern Railway Company, either as salary for personal services and expenses, or in re-payment of moneys expended by him in the construction of the railway of the company.

19. On October 27, 1884, John Hack et al. filed a creditor's bill against the Chicago and Great Southern Railway Company and Henry Crawford in the Circuit Court of Jasper County, Indiana.

(Record pp. 13 and 14.)

On the same day the Circuit Court of Jasper County entered an order appointing Philip B. Shumway Receiver. (Record p. 12.)

Afterwards, on March 5, 1885, Henry Crawford filed his answer in the Jasper Circuit Court, disclaiming all interest in the result of said suit, and upon said answer an order and decree was entered that Crawford recover from the plaintiffs his costs, and that he—said Crawford—had no interest whatever in any controversy pertaining to said action. (Stipulation, Record p. 198.)

On February 26, 1885, the Circuit Court of Jasper County removed Receiver Shumway, and appointed in his stead William Foster, former President of the railway company. In the order appointing Foster it was ordered, among other things, as follows:

"And the Court, as a condition of the appointment of the Receiver, reserves the right to make any other order respecting the priority of labor and supply claims accruing prior to the Receivership herein as may hereafter seem and appear to the Court to be equitable and just." (Record p. 198.)

On the 4th day of April, 1885, the cause of *Hack et al.* v. *The Chicago and Great Southern Railway Company* was removed to the Circuit Court of the United States for the District of Indiana. (Record pp. 11 to 17.)

On March 9, 1885, Henry H. Porter brought his original bill of complaint against the Chicago and Great Southern Railway Company, John C. New, Trustee, et al., averring that New, as Trustee, refused to bring the suit, and praying for the foreclosure of the mortgage or deed of trust of the Chicago and Great Southern Railway Company of November 1, 1881, and the deed of further assurance executed by said Chicago and Great Southern Railway Company to said Trustee, John C. New, on April 9, 1883. (Record pp. 1 to 11.)

On April 18, 1885, the cause of *John Hack et al.* v. *The Chicago and Great Southern Railway Company et al.*, and the original cause of *Henry H. Porter* v. *The Chicago and Great Southern Railway Company et al.* were consolidated, the consolidated cause to proceed under the style and title of "*Henry H. Porter* v. *The Chicago and Great Southern Railway Company et al., consolidated cause.*"

(Record p. 30.)

On April 29, 1885, and August 15, 1885, orders were entered authorizing the Receiver to issue certificates for the payment of Receiver's indebtedness, and for making certain needed repairs and replacements upon the railway. Under these several orders Receiver's certificates to the aggregate amount of $153,000 were issued. (Record pp. 37, and 75 to 77.)

The railway company filed answer in the consolidated cause, admitting the averments of the bill of complainant Porter. (Record p. 39 to 41.)

John C. New, Trustee, defaulted and decree *pro confesso*, was accordingly entered.

Various creditors of the railway company were made parties defendant to the bill of Porter—some judgment creditors, and some whose claims had not been reduced to judgment. Subsequently, by various orders of the Court, other creditors, both judgment creditors and those whose claims are not in judgment, were made parties defendant. Proper pleadings were filed and issues joined. Still other creditors of the company filed intervening petitions.

Early in May, 1885, the Trustees of four townships, —two in Benton and two in Newton County,—which had voted aid in the construction of the railway amounting in the aggregate to about $40,000, applied to the Court, as Trustees of common schools, to be made defendants, and to be allowed to defend against the foreclosure of the mortgage. On full hearing this application was denied by the Court.

In June, 1885, the same Trustees, as Trustees of the respective civil townships voting aid, made application to be permitted to defend against the foreclosure proceedings as minority stockholders. This application also was denied by the Court, upon the ground that under the statutes of Indiana the individual taxpayers of the townships which had voted aid, were entitled to the benefit of the stock in proportion to the amount of taxes paid by them respectively.

Thereupon John W. Swan and Cephas Atkinson appeared as taxpayers of two townships and made application for leave to file their petition to be made defendants, and for leave to file their answer and defend against the foreclosure proceedings. This application was heard by the Court and taken under advisement, the Court intimating an opinion, but entering no decision or order at the time of said hearing.

On August 17, 1885, the Court rendered and entered decree of foreclosure and order of sale.

(Record pp 77 to 80.)

All the rulings, orders and decrees rendered and entered by the United States Circuit Court in this consolidated cause, and in the two causes so consolidated, down to the date of September 30, 1885, were rendered and entered by Hon. William A. Woods, District Judge, presiding in said Circuit Court.

20. On September 30, 1885, the application of Swan and Atkinson was reheard by the Court,—the Circuit Judge and the District Judge sitting together. Upon said rehearing the Court,—the District Judge dissenting,—entered an order admitting Swan and Atkinson as defendants, and allowing them to file their petition and answer. (Record p. 82.)

This order contains this special provision, viz:

" This order shall in no wise affect the decree heretofore made for the sale of the railroad by this Court, or rights of parties thereunder."

Swan and Atkinson filed their petition and sworn answer charging that the mortgage and bonds were fraudulently executed and issued, and are without consideration and void, also charging that Crawford's construction contract is fraudulent and void.

(Record pp. 82 to 91.)

On October 8, 1885, Swan and Atkinson, and others, filed petition to set aside the foreclosure decree entered August 17, 1885. This petition contains substantially the same charges against the mortgage that are contained in the answer of Swan and Atkinson, coupled with other erroneous charges and statements that need not be here stated. (Record pp. 95 to 112.)

On October 12, 1885,—the Circuit Judge presiding,—the Court entered a decree setting aside the foreclosure decree entered August 17, 1885. This order gave defendants thirty nine days in which to take their evidence "as to so much of said case as involves the validity of the mortgage and mortgage debts, as the same are described in the bill of said Porter, and the defendants' answers," and gave complainant Porter ten days thereafter in which to take his testimony in rebuttal.

(Record p. 120.)

Complainant Porter filed his replication to the answer of Swan and Atkinson. (Record p. 121,)

21. A mass of testimony was taken. By this testimony,—all of which is set forth in the record,—it was demonstrated that every material averment of the answer of Swan and Atkinson lacked the essential element of truth.

February 16, 1886, the cause was heard on the pleadings and testimony by the Circuit and District Judges sitting together. The stenographer's report of the oral opinion of the Circuit Judge in deciding the case as to the issue presented by the Swan and Atkinson answer contains the following:—

"Swan and Atkinson, on their own behalf, were allowed to intervene on the ground that they had paid taxes under an assessment which was levied to pay a subsidy that was voted for this railroad company. They took the position that they were involuntary taxpayers; that they had paid their money and were entitled to stock to the extent that they had paid taxes. Their application was that they be allowed to intervene for themselves, and in behalf of all other taxpayers who stood in the same relation. They were allowed to intervene. I think the evidence sufficiently shows that Swan and Atkinson both intervened, not at the request of any other taxpayers at all, but solely at the request of some of the creditors, and with the distinct understanding that they were to be protected, and that these creditors were even to pay the costs,—any costs that might be adjudged against them. I therefore think that Swan and Atkinson do not stand before the Court in the attitude of *bona fide* litigants. They are not here in their own behalf, really, and they admit that they are not here in behalf of any other taxpayers; that they spoke to no taxpayers upon the subject, and that no taxpayers requested them to intervene in this way. Whatever rights they might have, under other circumstances, I think the Court on these facts should not entertain their contention any further."

The District Judge in his dissenting opinion says:

"In respect to the position of Swan and Atkinson in the case, there is no difference of opinion. They were allowed to intervene upon a showing that, as taxpayers of townships which voted aid to the construction of the railroad, they, with other taxpayers, were entitled to stock in the railroad company to the amount of $40,000 or more, and that for protection of their own, and the rights of other taxpayers, they desired to file proposed answers; but the proof shows conclusively that their petition was not true, nor presented in good faith, but collusively for the purpose of aiding general unsecured creditors of the railroad company to resist the foreclosure of the complainant's mortgage. Besides this, Swan was a director and consented to the corporate acts now brought into question. He ought not to complain of his own acts. (Record p. 134.)

At the close of this hearing a second foreclosure decree was entered. (Record pp. 129 to 134.)

To parts of this decree the District Judge dissented and filed his dissenting opinion. We desire to call particular attention to this dissenting opinion as stating the facts, the questions in issue, and the law applicable to these questions, with great clearness, precision and force. (Record pp. 134 to 142.)

On March 2, 1886, the Court—the Circuit Judge presiding—entered an amendment or supplemental provision to the foreclosure decree of February 16, 1886. By inadvertence the Clerk omitted this amendment in making up the record, but he has corrected the error, so far as practicable, by sending a certified copy of the omitted part to each solicitor of record in the case. We here, for convenience of this Court, print the one sent to us.

IN THE CIRCUIT COURT OF THE UNITED STATES.

For The District of Indiana.

November Term, 1885; March 2d, A. D. 1886.

Before Honorable Walter Q. Gresham, and Honorable William A. Woods, Judges.

Henry H. Porter, *vs.* **The Chicago and Great Southern Railway Company, et al.**	No. 7932; *Chancery.*

Come now the several parties by their Solicitors and the Complainant, Henry H. Porter, moves the Court upon written motion filed, to modify the decree rendered and entered herein on the 16th day of February, 1886; and the Court having considered the motion and being advised in the premises doth further order, adjudge and decree that all persons claiming to be creditors of said Railway Company and to have claims which are entitled in equity to be paid out of the proceeds to arise from the sale of said property, do present and file with the Master William P. Fishback, their said claims prior to the day of sale, namely, the 27th day of March, 1886, and that all claims which are not filed before said last named day, be and the same are hereby barred and foreclosed.

And that said Master do forthwith give notice of

the provisions of this order by publication for ten days in some daily newspaper published in the City of Indianapolis.

And it is further ordered, adjudged and decreed that the sale of the property hereinbefore ordered, shall pass to the purchaser, title thereto, free and discharged of all liens and claims, including the two classes of claims mentioned in the sixth paragraph of said decree.

UNITED STATES OF AMERICA, } ss:
DISTRICT OF INDIANA. }

I, Noble C. Butler, Clerk of the Circuit Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of an order made and entered in the above entitled cause on the 2d day of March, 1886, in said Court, as fully as the same appears of record in my office. And I further certify that the above order was inadvertently omitted from the transcript of the record prepared and forwarded to the Supreme Court of the United States on appeal.

[SEAL.] Witness my hand and the seal of said Court, at Indianapolis in said District, this 30th day of November, A. D. 1886.

NOBLE C. BUTLER,
Clerk.

By this second foreclosure decree no claimants were designated, found or decreed to be holders of valid claims; nor were the amounts of any claims determined or decreed. Hence this decree of February 16, 1886, was not final as to anything, excepting the validity of the mortgage, its foreclosure, the amount due complainant Porter, and the sale of the property freed and discharged of all liens and claims. To claim otherwise would be to claim that a final decree may be rendered in favor of *unknown claimants* for *undetermined amounts.*

By the ninth clause of this decree a reference was made to the Master to take testimony, ascertain and report the claimants, and the amounts due to each. (Record p. 133.) Under this reference much additional testimony was taken, which appears in this record.

Complainant Porter moved the Court for leave to file answers to the intervening petitions of several of these appellees, but the Court—the Circuit Judge presiding in Chambers at Chicago—refused to grant such leave, and overruled complainant's motion.

(Record pp. 154, 155.)

On March 27, 1886, the railway was sold by the Master and bought by Porter for $501,000. On the same day the Master reported the sale to the Court.

(Record pp. 147 to 149.)

On April 5, 1886, the sale was confirmed by decree of Court, and the purchaser was empowered to pay as cash, in part payment of the purchase money, all Receiver's certificates outstanding, then amounting with interest to $157,884.64, the remainder of the purchase money, $343,115.36, being paid in cash.

(Record pp. 149 to 153.)

On August 31, 1886, the Master filed his first report under the reference made in the foreclosure decree of February 16, 1886, in which report he recommends that the amounts therein set forth be paid the several claimants out of the purchase money fund, "if the Court shall decide that such claimant's claims are a lien prior in equity to the lien of the mortgage bonds." He further reports: "It has been agreed that a general statement might be made that all of the claims contained in the schedule accompanying this report, and allowed by the Master, are construction or operating claims, *and that nearly all are construction claims.* If, in the further progress of the suit, after hearing all exceptions to this report, it shall be deemed necessary to make a strict classification as required by the terms of the decree, the Master can do that by means of the evidence already taken." (Record pp. 170 to 181.)

Every dollar of the claims of these five appellees before the Court is solely for construction.

This report contains the claims of four of the five appellees now before the Court, to-wit: The Pittsburgh Bessemer Steel Company (Limited), the Cleveland Rolling Mill Company, the Smith Bridge Company and Crerar, Adams & Co.

On September 28, 1886, appellant Porter filed separate and several exceptions to the Master's report as to the claims of the four appellees above named.

(Record pp. 181 to 185.)

Exceptions were also filed to the report as to all the other claims therein allowed, but these exceptions have not been heard or determined by the Court, and have no connection with the appeals here presented.

On October 8, 1886, the Master filed his report on the claim of appellee Volney Q. Irwin. (Record pp. 185 to 187.) On the same day appellant Porter filed exceptions to this report. (Record pp. 191 to 192.)

On October 9, 1886,—the Circuit Judge presiding—the Court heard the several exceptions to the Master's report touching the claims of these five appellees. The Court overruled all the exceptions of appellant Porter and rendered final decrees in favor of these five appellees, decreeing that these several claims are prior, superior and paramount in lien to the lien of the mortgages, and bonds secured thereby, and that they be paid out of the proceeds of the sale of the property covered and conveyed by the mortgages to New, Trustee. Porter prayed a separate appeal from each of the five decrees in favor of these appellees, which appeals were granted and supersedeas bond given as required by the decree. (Record pp. 192 to 198.)

THE PITTSBURGH BESSEMER STEEL COMPANY'S CLAIM.

The intervening petition of the Pittsburgh Bessemer Steel Company shows on its face that it is a *construction* claim, and that the rails were used in the original construction of the railway north of Attica.

It charges that the rails were received by the railway company and laid in the track before any bonds were issued, and that Porter took the bonds with full notice of the rights and claims of the Pittsburgh Bessemer Steel Company.

It does not pretend to charge any fraud in the mortgage or bonds.

It does not pretend to have taken, or attempted to take, any lien under the Indiana statute.

It alleges that the railway company wrongfully took the rails and put them in the track after they had been stored at Goodland.

It admits having received $10,000 on the rails, which of course, waived any alleged wrongful taking of the rails by the railway company after they reached Goodland. (Record pp. 71 to 73.)

The mortgage was executed and recorded in November, 1881. One million dollars of bonds secured by it were issued in December, 1881. No rails were shipped by intervening petitioner, as shown by the petition, until January 10, 1882.

The evidence of William Foster, Volney Q. Irwin, J. W. Swan, Henry Crawford, and many others, conclusively establishes the fact that when these rails were received and laid in the track, the road was in process of construction from Attica north to Fair Oaks, and that the original construction thereof was not completed for nearly two years after these rails were received and laid in the track.

It is clear from the testimony that these rails were not used in construction until some time in the year 1882, many months after $1,000,000 of these bonds had been pledged to Dull and McCormick. (Record p. 770.)

It is certainly conclusively established by the testimony that the debt due the Pittsburgh Bessemer Steel Company is not a debt of the Chicago and Block Coal Railroad Company, nor any lien upon the property of the latter company, and can have no equity to be paid out of the proceeds of sale of the railway south of Attica, being the old Chicago and Block Coal Railroad. Not one of these rails went into that road. It was constructed and in operation years before the construction of the original Chicago and Great Southern Railway north from Attica was commenced.

THE CLEVELAND ROLLING MILL COMPANY'S CLAIM.

This appellee was made defendant to appellant Porter's bill for foreclosure. On June 24, 1885, appellee, with others, filed its amended answer.

(Record pp. 42 to 52.)

This answer admits that the claim is for "*rails for the building of said road*," and that the claim now unpaid accrued "*after the first of July, 1882.*" (Record p. 43.)

This answer contains these further averments, viz: "And these defendants, further answering, say that the materials furnished for the building of said railway by each of them respectively, was furnished, and the indebtedness therefor became due to them, and each of them respectively, after the default in the interest on the bonds of said railway company, as set forth and complained of by said complainant in his bill of complaint, and that after the first default in the interest complained of by said complainant in the bill of complaint, the said material was used in the construction of the said railway by the said railway company, and for the benefit and advantage of the said railway property."

(Record p. 44.)

This answer charges that the construction contract of Crawford was fraudulent and void. It will be remembered that the mortgage was executed and recorded in November, 1881, and one million dollars of the bonds were issued in December, 1881, and put in pledge to Dull on January 27, 1882, while Crawford's construction contract was not made until March 18, 1882.

It will be further remembered that at the time the mortgage was made and the one million dollars of bonds were issued, Crawford had no official connection whatever with the company. He was simply a stockholder owning a majority of the stock, and had furnished a large amount of cash that had been paid into construction.

There is not a word of evidence tending to prove that either Dull & McCormick or Drexel, Morgan & Co., or Porter, ever had the slightest suspicion, knowledge or notice that anybody asserted or claimed that there was any infirmity whatever in the mortgage or bonds. On the contrary, the proof is conclusive that neither of them had any such knowledge or suspicion, and that, in fact, no infirmity or fraud existed.

On August 4, 1885, this appellee, with others, filed what is called in the record a cross bill. (Record pp. 53 to 61.) This pleading also admits that the claim of this appellee is for rails used in the original construction of the first Chicago and Great Southern Railway Company north of Attica.

Both the answer and cross bill aver that the claim was reduced to judgment in the Newton Circuit Court of Indiana on March 11, 1885, but as this was long after the property was in the possession of a Receiver, of course this judgment in no degree strengthens the claim. It certainly did not give the claim priority over the mortgage and bonds issued in 1881. On March 12, 1886, appellee filed an intervening petition.

(Record pp. 142 to 145.)

This petition shows that appellee brought suit in the United States Circuit Court for the Northern District of Illinois, and on May 10, 1884, took judgment. Afterwards, on March 11, 1885, appellee took another judgment on the same claim,—we suppose on a transcript of the Illinois judgment,—in the Benton Circuit Court of Indiana.

The evidence shows that the contract for this iron was made October 10, 1881. The first shipment was November 14, 1881. The total amount delivered up to November 28, 1881, came to $22,684.36. This amount was paid to the Cleveland Rolling Mill Company in full on March 24, 1883. (Record p. 864.) This money was paid directly out of the Drexel, Morgan & Co. loan on the pledge of these bonds, and the Cleveland Rolling Mill Company knew that fact when it got the money.

(Record pp. 799 to 803, and 651 and 652.)

The Cleveland Rolling Mill Company never took, or attempted to take, any lien under the Indiana statute, so the President of the company testifies.

(Record p. 800.)

All that is now due on the claim of this appellee, accrued after the mortgage was executed and recorded, as is shown by the accounts of appellee set forth in the record. (Record pp. 833 and 834.)

The mortgage was recorded in every county along the line of the road prior to November 29, 1881.

This whole claim accrued before the consolidation in 1883 of the first Chicago and Great Southern Railway Company with the Chicago and Block Coal Railroad Company. Hence by no possibility could this claim be any claim against, or lien upon, the railway and property south of Attica.

There is no line or letter of testimony in this case proving or tending to prove, that the Cleveland Rolling Mill Company has any legal or equitable claim upon the railway and property north of Attica prior or superior to the lien of the mortgage and bonds issued thereunder.

THE SMITH BRIDGE COMPANY'S CLAIM.

The claim of this appellee is for balance due for furnishing materials and constructing two bridges on the line of the Chicago and Great Southern Railway north of Attica, one over the Wabash River, and the other over Pine Creek, both being in Warren County, Indiana.

On April 18, 1885, appellee filed an intervening petition. (Record pp. 24 to 30.)

It will not be necessary to examine this petition, because it was afterwards amended.

On August 4, 1885,—erroneously printed "1886",— Messrs. Straight, Wiley and Carter, and Harris and Calkins, as Solicitors of the Smith Bridge Company, filed an answer in which were made substantially the same charges as were made in the answer of the alleged taxpayers, Swan and Atkinson, heretofore mentioned. (Record pp. 62 to 69.)

This answer was explicitly withdrawn on September 30, 1885. (Record p. 82.)

On December 29, 1885, appellee filed its amended intervening petition, which is the pleading upon which this claim now rests. This petition sets up the contracts under which the two bridges were built, avers the furnishing of the materials and performance of the work. That it has never waived nor released its title or right to the bridges, and charges that Porter bought the bonds with full knowledge that the defendant railroad company had not paid for the bridges, and that appellee was the builder and owner thereof. It makes no charges whatever against the validity or good faith of the mortgage, and bonds issued thereunder, or the construction contract of Crawford. (Record pp. 121 to 123.)

On March 16, 1886, appellee filed another paper called its claim. We suppose this paper was filed under the clause of the second foreclosure decree requiring all claimants to file their claims before Master Fishback. This last paper is simply a condensed statement of the averments of the amended petition of December 29, 1885. (Record p. 146.)

The two bridges built by this appellee were built in the *original construction* of the Chicago and Great Southern Railway. They were built in the years 1882 and 1883. The contracts were directly with the Chicago and Great Southern Railway Company, the first contract bearing date October 26, 1882, the other July 24, 1883. The contract price of the two bridges was $39,450. Appellee has been paid on said contracts $18,850.

(Record pp. 809 and 810.)

The remainder of the contract price, and interest thereon, make up the amount mentioned in the Master's report. The claim of appellee is that by the contracts the ownership of the bridges remains in appellee until full payment therefor is made, notwithstanding the fact that the material is permanently attached to the right of way of the railway, and has become a part of the superstructure and track of the railway.

On October 8, 1886, the Master filed a supplemental report on this claim, by which it appears that appellee, on taking the contracts for the building of these bridges, required and received, and still retains, the *personal guaranty* of Henry Crawford on each of the contracts, and that upon adjustment of accounts between the railway company and appellee on April 3, 1884, appellee took from Henry Crawford his personal check for the balance due, which check appellee still retains.

(Record pp. 187 to 191.)

The evidence taken by appellee in support of this claim shows that no mechanic's or builder's lien was taken, and supports the facts found by the Master's supplemental report. (Record pp. 807 to 823.)

These contracts were made long after the mortgage was executed and $1,000,000 of bonds issued thereunder.

Appellee knew of the bonds being pledged to Drexel, Morgan & Co. This appears from the letter of Tolerton to Porter of December 5, 1884. (Record p. 189.)

Henry Crawford testifies to the same effect.

(Record p. 652.)

This is a *construction claim* for bridges on the new railway north of Attica. It cannot by any means be held to be a debt of, or claim against, the old Chicago and Block Coal Railroad south of Attica.

It is in fact, and in law, simply an unsecured debt of the Chicago and Great Southern Railway Company,—unsecured by any lien upon, or superior equity against, the railway, but secured by the guaranty obligation and personal check of a third party.

CRERAR, ADAMS AND COMPANY'S CLAIM.

The claim of this appellee is for railway materials and supplies furnished to the Chicago and Great Southern Railway for and during its construction. These materials were furnished solely upon the credit of the railway company as an unsecured indebtedness. The first item of the account is for material delivered January 12, 1883, and the account extends from that date on to the appointment of a Receiver. The mortgage had been of record and one million dollars of bonds had been issued thereunder, and had been outstanding for over a year, before this account commenced. The only pleading on this claim is the account duly verified. (Record pp. 91 to 95.)

The evidence introduced in support of this claim shows that the claim is for "railroad supplies," and is an ordinary unsecured debt. (Record p. 806.)

That the claim accrued for construction is conclusively proved by the dates at which the supplies were furnished, taken in connection with the evidence of Foster, Irwin, Swan, Crawford and many other witnesses, to the effect that the railway was then in process of construction.

It is not pretended that this appellee ever took, or attempted to take, any lien on the railway under the statute of Indiana.

VOLNEY Q. IRWIN'S CLAIM.

The claim of this appellee is for balance due him for earth work and constructing grade in the original construction of the railway north of Attica. The work was performed in Warren and Benton Counties. Irwin was made defendant to Porter's foreclosure bill. On April 9, 1885, Irwin filed a pleading called a cross bill, but which is in fact an answer and intervening petition. In this pleading appellee sets forth his construction contract; avers that he did work under it to the amount of $55,000; that the railway company has paid him all of this, excepting about $12,000; that on October 17, 1883,—within sixty days after the completion of the work,—he filed notice of lien in the Recorder's office of Warren County under and pursuant to the statute of Indiana, and that "on the —— day of October, 1883, he filed a copy of said notice in the Recorder's office in said county of Benton;" that he brought suit in Warren Circuit Court to foreclose said lien and obtained judgment for $11,781.16, and decree for foreclosure and sale of all of that part of the railway covered by his lien in Warren County; that his judgment remains unpaid,—he omits to state the important fact that he had the property sold on his lien, and bought it in, and that the Trustee, New, redeemed it from his foreclosure sale; that he brought suit in Benton Circuit Court to foreclose the lien in that county for the same indebtedness, which suit is still pending,—he omits to state the important fact that the work in Benton County was *included in his suit in Warren Circuit Court*, and that in that suit he litigated his *entire lien* and took decree for his *entire debt*. He further avers that the road was not finally and definitely located between the points named in his contract when the mortgage to New was recorded and that none of the bonds were sold until after he had completed his work.

He also avers that the bonds were issued without consideration. (Record pp. 17 to 19.)

On August 4, 1885, Irwin filed another answer to Porter's foreclosure bill. (Record pp. 69 to 71.)

In this answer he makes substantially the same averments as in the pleading last above mentioned. At the close of this answer he seeks, by reference, to make the averments of the answer of the Smith Bridge Company part of his answer. It will be remembered that this answer of the Smith Bridge Company was withdrawn as to that company, the pleading to "remain on file as an exhibit to other answers filed by said Solicitors." (Record p. 82.)

On April 19, 1886, Porter filed his answer to Irwin's intervening petition. (Record p. 153.)

These pleadings of appellee are very reckless in some of their averments.

The facts as testified to by Irwin himself disprove the chief averments of his pleadings. He swears that he began work on November 17, 1881, but "had done very little of it" by March 18, 1882; that his first payment was in March or April, 1882; that he was paid some in the spring of 1882, and occasionally a little through that summer, and that from the spring of 1883 he was paid regularly until the last estimate, which remained unpaid; that he knew his money was coming from Drexel, Morgan & Co. on the mortgage bonds;

that he knew that the bonds had been issued as early as the spring of 1882,—was told so by the President, Foster. (Record pp. 536 to 545.)

Henry Crawford testifies that Irwin knew that Drexel, Morgan & Co. were loaning money on the bonds, and that he was being paid out of money received from Drexel, Morgan & Co. (Record pp. 652 and 653.)

On October 17, 1883, Irwin filed notice of lien in Warren County. On October 23, 1883, he brought suit in Warren Circuit Court to foreclose his lien. In his complaint he includes his entire work, both in Benton and Warren Counties. Proper issues were joined, and in March, 1884, decree for $11,815.70, and for foreclosure of lien and sale of the property was entered. In June, 1884, execution issued. On July 12, 1884, the property was sold by the Sheriff and bought in by Appellee Irwin for $500, and the Sheriff issued to Irwin his certificate of the sale. On July 10, 1885, John C. New, Trustee, redeemed the property pursuant to law, and received from the Clerk of the Warren Circuit Court a certificate of redemption. (Record pp. 778 to 793.)

By this sale Irwin exhausted his lien. The finding of the Master that the redemption by New, the holder of a senior mortgage, brought the property back under the lien of the decree of Irwin,—who had just sold it under that decree, is absurd, in view of the express provisions of the redemption statute of Indiana.

The Court will pardon the length of this statement, in consideration of the fact that we are here presenting five separate appeals.

II.

ASSIGNMENT OF ERRORS.

First. The Circuit Court erred in decreeing the several claims of these five appellees to be liens upon the railway and property of the *original* Chicago and Great Southern Railway Company prior, superior and paramount to the lien of the mortgage or deed of trust executed and delivered by the original Chicago and Great Southern Railway Company to John C. New, Trustee, dated November 1, 1881.

Second. The Circuit Court erred in overruling the the several exceptions of appellant Porter to the reports of the Master upon the several claims of these five appellees.

Third. The Circuit Court erred in decreeing the several claims of these five appellees to be liens upon the railway and property of the *consolidated* Chicago and Great Southern Railway Company prior, superior and paramount to the lien of the mortgage or deed of further assurance, executed and delivered by the consolidated Chicago and Great Southern Railway Company to John C. New, Trustee, dated April 9, 1883, conveying to said New, as Trustee, the railway and property formerly known as the Chicago and Block Coal Railroad.

ARGUMENT AND CITATION OF AUTHORITIES ON POINTS COMMON TO THESE FIVE APPEALS.

1. The mortgages and bonds held by appellant Porter are valid obligations of the railway company. That they are valid and binding as against the company is conceded. No one can question that the company owes a large debt, for the construction of its railway,

represented by these mortgage bonds. No fact appears in the record proving, or even tending to prove, bad faith, irregularity, deceit or fraud in the execution of the mortgages to New, and the issuing of bonds thereunder. On the contrary, the evidence conclusively establishes the fact that these bonds in the hands of appellant Porter represent actual values received by the railway company. They represent the entire purchase money that was paid for the Chicago and Block Coal Railroad extending south from Attica to Yeddo. They represent every dollar of the money paid by Drexel, Morgan & Co.,—through their agent,—directly upon the construction of the railway north of Attica,— a considerable portion of which money was paid to these five appellees. They represent every dollar paid by Henry Crawford out of his own means for the construction of this new railway north of Attica. In a word, these bonds represent all that has ever been paid by the Chicago and Great Southern Railway Company for the Chicago and Block Coal Railroad, and all that has ever been paid for the construction of the sixty miles of new road from Attica to Fair Oaks, excepting only some $40,000 or $50,000 received from aid voted by townships.

Three objections to the mortgage and bonds were presented in the Circuit Court.

First:—That at the time the mortgage was executed and the bonds issued, Henry Crawford owned the entire stock of the company and *dominated* the Board of Directors, and that the mortgage and bonds were executed and issued under the dictation and coercion of Henry Crawford. These charges are not true. The evidence proves conclusively that in November and December, 1881, and January, 1882, when the mortgage was executed, and the one million dollars of bonds were issued and pledged to Dull and McCormick, Henry Crawford was not a director or officer of the company. William Foster was President and Foster and his associates constituted the entire Board of Directors. Crawford had never been at a meeting of the Board, Foster and his Board of Directors remained in full power and control until March 15, 1882. That this Board of Directors was not dominated or controlled by Crawford is conclusively proved by the fact that when Crawford asked the Board to enter into a construction contract with him and sent the Board a draft of a contract he wished executed, the Board of Directors flatly rejected the contract. (Record p. 877.)

When the mortgage was executed and the one million dollars of bonds were issued and pledged to Dull and McCormick, Henry Crawford held $50,250 par value of the stock. President Foster held $10,000 par value of the stock, and other parties held something over $2,500 par value of the stock. (Record pp. 860 and 861.)

The mere fact that Crawford owned a majority of the stock did not put the company under his control; nor can he, from such ownership of stock, be held to *dominate* the Board of Directors. This point is clearly settled by this Court in its decision in the case of *Pullman Car Co.* v. *Missouri Pacific Railway Co.* 115 U. S. 596.

The evidence of Foster, Swan, Crawford, and others, and particularly the memorandum of Foster delivered with the one million dollars of bonds, clearly proves that the bonds were issued by Foster and his Board of Directors in perfect good faith, and largely for indebtedness of the railway company then existing. It is proved that this memorandum,—although unsigned,—is in the handwriting of Foster, and was delivered to Starin, Crawford's employee, with the one million dollars of bonds. The memorandum appears in the record on page 864.

Second:—One or two of these appellees charge that the mortgage and bonds were executed and issued without consideration. It is not necessary to discuss this objection. There is not a word of evidence in support of it, while the proof that a large consideration has been received by the company for these bonds is abundant and conclusive. The memorandum of Foster above cited shows that these bonds represent the entire purchase price of the Chicago and Block Coal Railroad and all the cash advanced by Crawford. The contract with Drexel, Morgan & Co., under which they paid out $350,000 in cash, proves that these bonds represent the money advanced by them.

Third:—It was at one hearing in the Circuit Court argued by Solicitors for these appellees that the mortgage and bonds are invalid, because there was no legal Board of Directors of the company at the time the mortgage was executed and the one million dollars of bonds issued. This argument was based on the assumption that Crawford, or Crawford and Foster, then owned *all* of the capital stock of the company, and that therefore the persons acting as directors were not eligible to so act, because they were not stockholders. As has already been seen, this assumption is false in fact, and therefore any conclusion founded upon it must be erroneous. The evidence proves that when the mortgage was executed and the one million dollars of bonds were issued and pledged to Dull and McCormick, Crawford and Foster did not hold all the stock. Other parties held over $2,500 par value of it as late as March 15, 1882.

(Record pp. 860 and 861.)

But it will hardly do for these appellees to assume this position, for, if the mortgage and bonds are invalid because there was no legal Board of Directors, then the contracts between these appellees and the railway company, upon which they base their claims now before this Court, are void for the same reason; so also would the consolidation by which the railway company procured the Chicago and Block Coal Railroad be void, and that road would have to be restored to Crawford free from all claims or debts of the Chicago and Great Southern Railway Company.

These directors were stockholders. But, even if they had not been stockholders, they were acting directors, holding themselves out to the world as directors, and were directors *de facto*. Under such circumstances their official acts bind the corporation, and all persons claiming under it.

Woods Railway Law, Vol. 1, Sec. 148, and authorities there cited.

Boone on Corporations, Par. 140.

Green's Brice's *Ultra Vires*, 2 Am. Ed., pp. 522 to 528, and authorities there cited.

Angel & Ames on Corporations, 10th Ed. Par. 287, p. 287, and authorities there cited.

2. The claims of these appellees are for the *original construction* of the railway. The principle laid down in *Schall's Case*, 99 U. S. 256, and many subsequent decisions of this Court following that case, does not apply to claims for *original construction*. The principle decided in these cases is that a completed railway, opened for use by the public, owes certain duties to the public in return for its franchise rights, the chief of which duties is to keep the railway open for travel and transportation of freight,—to keep it a "going concern." These cases, therefore, hold that if earnings have been diverted to payment of bond interest, or improvement of the mortgaged estate, and thereby *operating expenses* have accumulated and remain unpaid when a Receiver is applied for and granted, the earnings of the Receivership—and if need be the proceeds of sale of the property shall be applied to a complete restoration of all earnings diverted to bond interest and improvement of the mortgaged estate; the theory being that all earnings are first applicable to the operating expenses and necessary repairs, and that there are no net earnings applicable to payment of bond interest and improvements until after all operating expenses and repairs are fully paid.

These cases go further and hold that even if no earnings had been diverted prior to the appointment of a Receiver, still the fact that the road has been kept a "going concern," and that its franchise rights have been preserved by continuing it in operation, furnish an equity broad enough and strong enough to support the payment out of proceeds of sale of all *operating expenses* incurred prior to the Receivership,—or at least for such a period of time prior to the Receivership as to the Court shall seem equitable and just. But these decisions and principles of equity upon which they rest, are not at all applicable to claims accrued for the *original construction* of a railway. They cannot apply in this case. These five appellees gave credit to the railway company for their work. It was construction work. Not a dollar of these five claims is for operating expenses. No part of the work or materials furnished by these five appellees went towards keeping a completed road in operation.

When these claims accrued the Chicago and Great Southern Railway Company had not opened its road for use as a common carrier. It then owed no duties to the public.

As has been shown in our statement of facts, these claims accrued *after* the mortgage had been executed and recorded, and after one million dollars of the bonds secured thereby had been issued and pledged to *innocent, good faith holders for value.*

Even if they had accrued before the mortgage was executed, that would not prevent the lien of the mortgage from being superior to them. *Wabash, St. Louis and Pacific Railway Co.* v. *Ham*, 114 U. S. 595 to 598. A railway company that owes floating and unsecured debts has complete and absolute right to execute a mortgage on its railway and property to a competent Trustee, and issue bonds secured by said mortgage, and such bonds in the hands of holders for value, will have a lien superior and paramount to any such floating debts, in fact, floating debts have no lien whatever upon the property. They are simply debts of the company and constitute no specific lien upon the property of the company.

But the claims of these appellees accrued after the mortgage was executed and recorded, and after bonds issued thereunder had been pledged for value. If, therefore, these construction claims constitute a lien upon the railway superior and paramount to the lien of the mortgage bonds, they must acquire such lien by means of some occult principle of law hitherto wholly undiscovered.

No well considered adjudicated case has been, or will be, cited, holding that unsecured floating debts for construction are a lien on a railway superior to the lien of a valid mortgage duly recorded, and bonds issued thereunder, and held by good faith purchasers for value. The authorities in support of the superior and first lien of these bonds are abundant and without conflict.

Although it has frequently been attempted to prefer the claims of construction contractors and material men to the rights of bondholders, the Courts have steadfastly held that such construction debts have no equity in preference to the lien of a previously recorded mortgage.

Courts have no lawful right to postpone the lien of a recorded mortgage to the supposed equity of a subsequent creditor who dealt with full knowledge of the encumbrance. The owner of iron rails which were laid in the track of a railway under an agreement that they could be taken up if not paid for, acquired no rights against a previous mortgage.

Pierce v. *Emery*, 32 N. H. 484.

When moneys are advanced to pay taxes and for rights of way, a judgment taken therefore has no equity against the bondholders.

Coe v. *Columbus, Piqua & Indiana R. R. Co.*, 10 Ohio State 372.

When rails, or other material which becomes affixed to, and a part of, the principal thing, are furnished, the creditor furnishing the same can have no claim superior to a prior mortgage.

United States v. *New Orleans Railroad*, 12 Wall. 365.

This doctrine is very fully discussed in the case of *Galveston Railroad* v. *Cowdrey*, 11 Wall. 480 to 483. In this case a creditor who had furnished rails to construct a portion of the road claimed an equity prior to the bonds. The Court said:

"The rails put down on the company's road became a part of the road. The road itself was included in the mortgages to complainant. Pulsford, by allowing his property to go into and become a part of the road, consented to its being covered by the mortgages in question. He acquired no lien which can displace them. We have no hesitation in saying that Pulsford's claim to priority cannot be maintained."

To the same effect are the following cases:

Dunham v. *Railroad Co.*, 1 Wall. 254.

Dillon v. *Barnard*, 21 Wall. 440.

Wright, Assignee, v. *Kentucky & Great Eastern Railway Company*, 117 U. S. 72.

Buncombe County Commissioners v. *Tommey*, 115 U. S. 122.

Coe v. *New Jersey Midland Railway Co.* 31 N. J. Eq. 105.

Bear v. *B. C. R. & M. Ry.* 48 Iowa 619.

There is no such thing in the law as an implied lien on the tangible property of a railroad.

Cincinnati v. *Morgan*, 3 Wall. 275.

David v. *Alvord*, 94 U. S. 545.

Fosdick v. *Schall*, 99 U. S. 235.

3. It was argued in the Circuit Court, and we suppose will be again argued here, that Crawford's construction contract was fraudulent and void, and that in in some mysterious way that contract makes the mortgage and bonds inferior in lien and equity to these construction claims of appellees.

The mortgage was executed and recorded in November, 1881. One million dollars of bonds secured by it were issued in December, 1881, and pledged to Dull and McCormick in January, 1882, while Crawford's construction contract was not made until March 18, 1882.

This one million dollars of bonds issued under the mortgage and pledged to Dull and McCormick long before Crawford's construction contract was made, exceeds the present value of the entire railway property. Hence it would seem that questions touching that construction contract have little, if any, significance in this case. The substance of Crawford's construction contract is, that in consideration of the bonds and stock which he was to receive under the contract, he bound himself not only to complete but to equip the road. The evidence shows that he failed to fully perform this contract, but there is no evidence showing, or tending to show, that the contract itself was unfair. Certainly partial failure in the performance of a contract is no ground for denying relief upon the contract in so far as it was performed. This construction contract, entered into by Crawford on the 18th of March, 1882, has no taint of fraud about it. It is not constructively fraudulent, because when it was made Crawford was not a director or trustee, or officer of the railway company. His only connection with the company was that he was the owner of stock in the company. The evidence clearly shows that the contract was entered into for the purpose of aiding Crawford in the negotiation of the bonds then held in pledge by Dull and McCormick. Only $200,000 of bonds were issued after this contract was made. One million dollars of the bonds had been issued and pledged to Dull and McCormick to secure the payment of the balance due for the Chicago and Block Coal Railroad, months before the construction contract was made. When this contract was made Crawford was a large creditor of the company for money advanced and paid into construction. At the time this contract was entered into Crawford was under no obligation to incur new risks and make further advances, except on terms. Under Section 3019 of Indiana., Statutes, 1881, the company had the clear right to dispose of its bonds and stock at such rates as it saw fit.

It will be remembered that long after this first million dollars of bonds had been issued and delivered to Crawford, and by him pledged to Dull and McCormick, Foster and his Board of Directors rejected and refused a construction contract proposed to them by Crawford, thus showing that when the million dollars of bonds were issued and delivered to Crawford they were not delivered under any construction contract with him.

The evidence of Foster, Little, Swan, Crawford, and others, proves that Crawford had been advancing from his own means large amounts of money, and it was to reimburse him the $300,000 or $400,000 of his own means already paid into the work, and to enable him to complete the payment for the Chicago and Block Coal Railroad and go on with the work of construction that this million dollars of bonds were issued to him. The evidence further shows conclusively that every dollar ever received by reason of the issue of the bonds went directly into the property.

This construction contract was not an actual fraud. The property produced by the money of the contractor, Henry Crawford, has never been worth the actual cash expended in its construction. From the date of the construction contract, March 18, 1882, the railway company was never able to issue or deliver a single bond under that contract except by the consent of Dull, or Drexel, Morgan & Co, the parties holding the bonds and stock in pledge. All the advances of cash made by Crawford after the date ot his construction contract were made without any security whatever to him. Every bond issued after the contract with Drexel, Morgan & Co., by that contract, was required to be delivered directly to Drexel, Morgan Co. as additional security to them. The proof is absolute that Crawford has realized no profits whatever out of the mortgaged estate, never having received one dollar for his services or a dollar in reimbursement of the vast sums of money he has paid into this work. Under the facts, the construction contract seems to have no material bearing whatsoever upon this case.

Kitchen v. *St. L. K. C. & N. Ry*, 69 Mo. 224.

The rule is well settled that even when a contract is voidable by reason of the fact that it was made by the company with parties interested in the company, the stockholders' right to rescind must be exercised as soon as it may reasonably be done after the facts are known which give the right of recision.

Twin-Lick Oil Co. v. *Marbury*, 91 U. S. 587.
Grimes v. *Sanders, et-al.*, 93 U. S. 55.
Hayward v. *National Bank*, 96 U. S. 618.

There was no secrecy about this transaction. This construction contract was spread at large upon the record book of the railway company the day it was entered into.

"It never has been held that such arrangements were invalid when it appears that the stockholders were properly consulted and sanctioned what was done, either by their votes or silence."

Hotel Company v. *Wade*, 97 U. S. 23.
Dimpfell v. *Ohio & Mississippi Ry*, 110 U. S. 210.

Even if this construction contract could be held void by reason of the fact that Henry Crawford was a stockholder when he entered into the contract with the company, still no Court would listen for an instant to the suggestion of rescinding a contract, under which about sixty miles of railroad had been constructed without enforcing repayment of the amount actually expended in good faith under the contract.

Thomas v. *Railroad Co.*, 109 U. S. 526.

No precedent can be cited where Courts have ever avoided such executed contracts *at the election of creditors.*

That subsequent creditors cannot be heard to impeach a contract executed before they dealt with the company, is settled by the explicit decision of this Court in the case of *Graham* v. *Railroad Company*, 102 U. S. 148.

The claims of four of these appellees accrued long after Crawford's construction contract was made.

The claim of the Cleveland Rolling Mill Company accrued before this construction contract was made, but it is estopped from attacking this contract, and transactions of Crawford made thereunder, by the fact that it, with full knowledge, received and acknowledged receipt of money coming directly from Drexel, Morgan & Co. on a pledge of these bonds made to Drexel, Morgan & Co. by Crawford after the construction contract was made, and while Crawford was carrying on the work of construction under and pursuant to his contract.

4. These bonds are *commercial securities.*

There is no fact in this record tending to taint them with fraud, or even to cast a shadow of suspicion over them. Dull and McCormick, Drexel, Morgan & Co. and Porter were respectively successive purchasers in good faith of these commercial securities, and are entitled to protection accordingly. Even if facts existed casting a taint upon these bonds, there is not a particle of evidence in the record tending to show that either of these successive holders took the bonds with notice of such taint. They all paid large sums of money, and parted with large values, upon the faith of these bonds as valid securities. Drexel, Morgan & Co. had full and careful investigation made by eminent lawyers before they took the pledge of these bonds to secure their loan of $850,000 in cash. (Record pp. 932 to 936.)

Good faith holders of such securities are protected by law.

It cannot be pretended with any sincerity that there is the slightest evidence that either Dull and McCormick or Drexel, Morgan & Co. or Henry H. Porter had any notice or intimation of any irregularity or infirmity in these bonds when they made these large advances of money on them. Until long after these transactions were completed, and the money paid, and this suit brought, there was no claim made by anybody, either taxpayer or creditor, that the bonds were not in every respect regular and valid.

The law protecting *bona fide* holders of commercial securities for value is well settled by decisions of this Court. "The mere possession of negotiable bonds is *prima facie* evidence that the holder is the proper owner and lawful possessor of the same, and nothing short of fraud, not even gross negligence, if unattended with *mala fides*, is sufficient to overcome the effect of that evidence, or to invalidate the title of the holder, supported by that presumption."

Goodman v. *Simonds*, 20 How. 343.
Murray v. *Lardner*, 2 Wall. 110.
Railway Co. v. *Sprague*, 103 U. S. 760.

Pana v. *Bowler*, 107 U. S. 542.

Galveston Railroad v. *Cowdrey*, 11 Wall. 459.

Suspicion as to the title, or the knowledge of such suspicion as would have put a reasonable man upon inquiry, are not sufficient to constitute a defense. The holder must be personally chargeable with fraud. Even if there is fraud or illegality in the inception of the securities, the holder protects himself when he shows he paid value. Any holder who acquires such securities in good faith and for value, has a title good against the world, and can enforce it against the maker for the full amount thereof, wholly irrespective of the price at which he bought.

Collins v. *Gilbert*, 94 U. S. 753.

Cromwell v. *County of Sac*, 96 U. S. 51, 58.

Lilienthal's Tobacco v. *United States*, 97 U. S. 266.

There is not the slightest evidence that Porter had any notice, or even a suspicion, that there was any irregularity or infirmity in these bonds when he paid Drexel, Morgan & Co. over $392,000 in cash for them. There was no infirmity in the bonds, but even if there had been, and if Porter had known of that infirmity, still he could protect himself and his title by the title of Drexel, Morgan & Co., and through them, by the title of Dull and McCormick.

Montclair v. *Ramsdell*, 107 U. S. 160, 161.

5. It was argued in the Circuit Court that Porter did not buy the bonds of Drexel, Morgan & Co., but bought them directly from Henry Crawford. This theory has no facts in its support, while the evidence to the contrary is so overwhelming as to make the proposition seem absurd.

The testimony is clear that Crawford has never had in his possession, nor under his control, a single one of the one million dollars of bonds pledged to Dull and McCormick since January 27, 1882. Dull and McCormick,—not Henry Crawford,—delivered those bonds to Drexel, Morgan & Co upon payment to them by Drexel, Morgan & Co., of the debt due them for the Chicago and Block Coal Railroad. The $200,000 of bonds issued after the Drexel, Morgan & Co. loan was negotiated were at once delivered to Drexel, Morgan & Co. under their contract of pledge, and Crawford testifies that he has not seen any of the bonds,—either of the one million dollar issue, or of the $200,000 issue since they went into the possession of Drexel, Morgan & Co.

The pledge of a chattel or chose in action vests the legal title in the pledgee.

Jones Chattel Mortgages, Sec. 426.
Fay v. *Burditt*, 81 Ind. 433.

The contract and correspondence between Drexel, Morgan & Co. and Porter make it clear that Porter bought the legal title to the bonds from Drexel, Morgan & Co.—not from Henry Crawford.

(Record pp. 907, 908, 910 and 911.)

But it is argued that the agreement between Crawford and Porter of December 26, 1884, (Record pp. 911 to 915,) is in conflict with our claim that Porter purchased the bonds from Drexel, Morgan & Co. We think no conflict arises. In our statement of facts we think it is clearly shown that the contract of December 26, 1884, between Crawford and Porter, was simply a sale by Crawford to Porter and associates of Crawford's *right to redeem the bonds from Porter and associates* by buying the amount Porter had paid Drexel, Morgan & Co. By the contract of June 25, 1884, between Porter and Nickerson and Drexel, Morgan & Co, (Record pp. 907 and 908,) Porter and Nickerson bound themselves to pay Crawford's debt to Drexel, Morgan & Co. upon receiving from Drexel, Morgan & Co. the stock and bonds held by them as collateral to Crawford's debt. Nickerson assigned his interest in this contract to Porter, and Porter paid Drexel, Morgan & Co. Crawford's debt and took from Drexel, Morgan & Co. the bonds pledged to them by Crawford as collateral to his debt. By that transaction Porter became owner of the legal title to, and pledgee of, the bonds, and became subrogated to all the rights of Drexel, Morgan & Co. in them.

Lidderdale' Executors v. *Robinson*, 12 Wheat. 596, 597.

Hunter v. *United States*, 5 Peters 181.

Dodge v. *Freedmen's Savings and Trust Co.*, 93 U. S. 386.

Hayes v. *Ward*, 4 Johnson's Ch. (N. Y.) 129.

Brandt on Suretyship, Secs. 260, 261, 275.

The contract between Crawford and Porter of December 26, 1884, simply extinguished Crawford's right of redemption in the bonds pledged. Even if the legal effect of this agreement were to make Porter and associates purchasers of the legal title of the bonds from Crawford, and not from Drexel, Morgan & Co., still, if necessary for their protection, equity would subrogate Porter and associates to the rights of Drexel, Morgan & Co., and through them to the rights of Dull and McCormick.

It is claimed that certain clauses of the agreement of December 26, 1884, between Crawford and Porter create some sort of equity or lien in favor of these appellees as construction claimants. The parts of the agreement referred to are as follows:

Porter, in behalf of himself and associates, agrees "to pay and clear off any and all claims against said Chicago and Great Southern Railway Company, which may be decided by the Court to be liens upon the said railway paramount to the lien of the bonds and coupons secured by the trust deed to said John C. New, dated November 1, 1881, or which the Court may decide shall be equitably payable out of the proceeds of the sale of the said line of railway prior to any payment of the said bonds and coupons, including therein any and all claims for right of way and depot grounds, engine house and station buildings, water tanks and shops, between Fair Oaks and Yeddo," etc.

Crawford, on his part, agrees thus:

"The party of the first part hereby, in consideration of the premises, guarantees and agrees that the claims, liens, and other possible idebtednesses mentioned in Subdivision II, which shall be held to be prior in right to payment over said 1,200 bonds and coupons, shall not in any event exceed the sum of $100,000," etc. (Record pp. 913 and 914.)

These clauses are easily understood. There can be no reasonable doubt as to their meaning. They create no equity in favor of these appellees. They simply recognize the fact that there may be claims for *operating expenses* under what is known in this circuit as the "six months rule," and for taxes, right of way and the like, which upon principles now well settled, the Court would hold prior and superior to the lien of the mortgage. The payment of such claims, if any were found to exist, could not be evaded. The clear and obvious purpose and effect of these clauses of the agreement is to define and measure the rights and duties of the parties to the contract in respect to such claims as this, *as between themselves.* They create no lien or right in favor of appellees, or any other claimant holding claims for construction.

Crawford's purpose in making this contract of December 26, 1884, was to protect, so far as he could, his second pledge of the bonds and stock to the First National Bank of Chicago. About $100,000 of the money he had borrowed from that Bank had gone into the construction of this railway, and he had given the Bank a second pledge of the bonds and stock held by Drexel, Morgan & Co. (Record p. 661; also p. 697.)

To effect this purpose, on the same day he made the contract with Porter and associates,—December 26, 1884,—he made an assignment of all his interest in that contract to the Bank. (Record p. 915.)

These arrangements and contracts between Porter and associates and Crawford, and between Crawford and the Bank, occurring after Porter had bought the bonds from Drexel, Morgan & Co., surely did not in any degree change the legal relation of these appellees, to this railway company and its property. They were unsecured construction claim holders then, and they still remain in that same relation.

6. Even if the mortgage and bonds were voidable for fraud this Court would sustain them as a prior lien upon the property to the amount actually advanced upon the bonds, and expended in the construction of the railway, with interest thereon.

Thomas v. *Brownville Railroad Co.*, 109 U. S. 525, 526.

The final decree in favor of these appellees finds that the total net proceeds of foreclosure sale of the railway, after payment of expenses and Receiver's indebtedness, only amount to $325,194.27.

(Record p. 193.)

It cannot be disputed that every dollar of the Drexel, Morgan & Co. loan went directly into this property. These appellees surely will not be heard to deny this fact for they all received payment out of this loan, knowing that the loan was made on these bonds.

On January 12, 1885, when Porter paid the Drexel, Morgan & Co. loan it amounted to $392,363.24,—(Record p. 322,) which is $67,168.97 more than the entire net proceeds of the sale of the railway,—to say nothing about interest on this amount paid by Porter, from January 12, 1885, to March 27, 1886, the day of sale. Hence, if these bonds were held a first lien on the property for only the cash advanced by Drexel, Morgan & Co. on the faith of them, and expended directly on the property, even that would absorb far more than the entire net proceeds of sale of the property. Therefore there is no fund in Court arising from said sale that can by any possible view of either law or equity be held applicable to the payment of the construction claims of these five appellees.

In this last above statement we have not mentioned the sum of $600,000 in cash put into this property by Henry Crawford in good faith out of his own individual means. We have only considered the cash advanced and expended upon the property by Drexel, Morgan & Co. solely upon the faith of these bonds.

7. One other theory advanced remains to be considered. It is, that there was, and is, in fact, *no corporation at all;* that the Chicago and Great Southern Railway Company was only a name—a shadow—without substance or corporate existence; that Henry Crawford was, during all these transactions, the owner of the entire railway property, and, therefore, whenever the corporate name is used in contracts or instruments, it is to be considered as meaning Henry Crawford; that in Courts of equity mere forms must be disregarded and substance alone considered, and that therefore these claims must be considered solely as debts due these claimants by Henry Crawford for work performed and materials used in constructing *his* railway. Under this theory it is asserted that in some mysterious way, wholly undefined, these construction claims have a lien on the railway prior and superior to the lien of the mortgage and bonds issued thereunder. In view of the clear proof, and undisputed facts contained in the record, we think this may properly be called the nebular theory of the case. To give it any foundation at all, its supporters must assume that before, and when, the mortgage to New was executed and recorded, and the one million dollars of bonds were issued and delivered to Dull and McCormick, Crawford actually owned every share of the cor-

porate stock of the alleged corporation. This assumption is not true. We have already shown, by reference to the record, that Crawford did not own all the stock at that time. The record shows that on March 15, 1882,—months after the mortgage was recorded and the one million dollars of bonds had been issued under it,—Crawford bought from President Foster $10,000 par value of the stock, and from other holders $2,790 par value of said stock. (Record p. 861.) The record further shows that in June, 1881, before Crawford became the owner of a single share of the stock, $63,700 par value of this stock had been issued and was outstanding. (Record p. 860.)

The record further shows that from June 23, 1881, to March 15, 1882, Crawford was the owner of only $50,250 par value of this stock.

(Record pp. 859 to 861.)

The record is full of evidence proving that long before Crawford had any connection whatever with this enterprise, there was a duly incorporated railway company, that it had issued stock; that it had located a line, procured right of way, and commenced the work of construction. Some of the townships along the line had voted aid for the construction of this railway long before Crawford had any connection with it. Did they vote aid to a myth—to an alleged corporation that had no real existence? The record further shows that each of these five appellees contracted directly with the Chicago and Great Southern Railway Company.

(Record pp. 17, 24, 43, 71 and 91.)

This chimerical theory has no facts to rest upon.

But suppose it were true, would it help these appellees any in their attempt to assert a lien on the railway prior and superior to the lien of the mortgage to New, Trustee? Let us see. Under this theory Crawford owned the entire property. The corporate name, whenever used,—either in executing the mortgage to to New, or in signing the contracts with these appellees under which they now claim,—must be deemed to have the same meaning as if Crawford had used his own name. Wherever in mortgage, bond, contract or instrument the name "Chicago and Great Southern Railway Company" is used, we are to understand it to mean "Henry Crawford."

With that understanding, the facts would be that Crawford owned the projected railway. After paying a large amount of money upon its construction, for the purpose of obtaining means with which to further prosecute the enterprise, he prepared bonds and executed a mortgage conveying *his railway, built and to be built*, to a competent Trustee, and caused the mortgage to be recorded in each county along the line of his railway. He retained possession of the bonds for a time, in the meantime carrying on the work of construction. After a time he delivered the bonds, secured by his mortgage on his railway, to Dull and McCormick in pledge for the payment of his debt to them for some twenty miles of completed railway, connecting with his new railway at Attica, and extending south to Yeddo. Afterwards he pledged the same bonds to Drexel, Morgan & Co. for a loan of $350,000. With part of this money he paid the balance due Dull and McCormick for the Chicago and Block Coal

Railroad. Every dollar of the remainder of this loan was expended in the construction of his new railway.

While the bonds were in pledge to Drexel, Morgan & Co. he gave a second pledge of them to the First National Bank of Chicago to secure a debt he owed that Bank. About $100,000 of the money borrowed from the Bank he paid out for construction work on his new railway. Finally, in order to pay the debts for which the bonds were pledged, he transferred all his right, title and interest in the *bonds*,—not the railway,—to Porter and associates. Now, if this were all true, the moment Crawford delivered the bonds secured by his mortgage on his projected railway to a third person for a valuable consideration, they became effective and binding, and the mortgage securing their payment also took effect as a valid security. Therefore, the moment Crawford delivered the bonds to Dull and McCormick, they became a first valid lien upon the railway and property.

The owner of property, although he may be in debt for it, or in debt to those who helped him construct or create it, may, nevertheless execute a mortgage on it which will be good against all creditors holding unsecured debts. Under this alleged theory of the case Crawford did just this, and no more. These appellees would not have a lien superior to the lien of the bonds in this supposed case. They never acquired any lien on the railway,—whether it belonged to Crawford, as a corporation *sole*, or to the Chicago and Great Southern Railway Company. The mortgage was recorded before their claims accrued. They received part of the money derived from the pledge of the bonds to Drexel, Morgan & Co., with knowledge that the money was obtained on the bonds.

But, upon the plain and undisputed facts on the face of this record, this whole theory that there was no corporation, and that all these transactions are to be treated as individual transactions of Henry Crawford, is untenable and absurd.

The points thus far presented are common to these five several appeals. The facts, proved, and the authorities applicable to these facts, clearly establish:

1. That the mortgage and bonds were executed and issued in good faith for value, and are valid and binding obligations of the company.

2. That the claims of these appellees are *construction claims.* That they are unsecured by any statutory lien on the railway. That they accrued *after* one million dollars of the bonds had been issued and were outstanding for value, and that, therefore, appellees cannot question the validity and first lien of the bonds.

3. That if these claims had accrued before the mortgage was executed, and the bonds were issued, still the mortgage would have the first lien on the property in preference to these claims, because even a subsequent mortgage, executed in good faith and for value, always becomes a first and superior lien in preference to existing unsecured debts; and because in this case these appellees are estopped from denying the first lien of these bonds by the fact that they received in payment on their construction work money which they well knew was being advanced to the company upon the faith of these bonds as valid securities.

4. That the construction contract between Crawford and the company cuts no figure in this case, because it was not made until long after the mortgage had been recorded, and one million dollars of bonds secured thereby, had been issued and pledged for value, and because the million dollars of bonds, so issued andpledged before the construction contract was made, far exceed the present value of the property.

That the construction contract is neither constructively nor actually fraudulent, no disability to contract existing when this contract was made, and no evidence of unfairness in its provisions being shown.

That if the construction contract were voidable for fraud, no Court of Equity would rescind it without enforcing re-payment of all money expended in good faith in the construction of the railway under the contract.

5. That even if the mortgage could be held invalid for any cause, still the Court would hold the bonds a first lien on the property to the extent of the money advanced upon them by Drexel, Morgan & Co. and paid into the property. This amount being more than the total net proceeds of sale of the property, no part of the proceeds of such sale can be applicable to the payment of appellees' claims. In no event can appellees have any possible lien upon, or claim against, the Chicago and Block Coal Railroad from Attica to Yeddo.

6. That these bonds are commercial paper. That law and equity protect innocent good faith holders of these bonds for value. That Dull and McCormick, Drexel, Morgan & Co. and Porter are successive good faith holders for value, without any notice whatever of

irregularity or infirmity in the bonds. That any holder of these bonds can protect his title by the title of any previous holder and that in this case no infirmity whatever in the bonds has been proved.

7. That there is nothing in the theory that all these transactions were the individual transactions of Crawford, but that if that theory were true, it would in no wise help these appellees in attempting to assert a lien on the railway prior and superior to the lien of the mortgage, because if Crawford were held to be sole owner of the property he must be held to have had the right to mortgage his property, and having done so, such mortgage would be a first lien on it superior to any asserted lien of his unsecured creditors.

If, under the facts clearly proved and the authorities cited, these construction claims can be held superior in lien to the lien of this mortgage and these bonds, railroad mortgages and bonds are a delusion and a snare, rather than a safe investment and commercial security.

III.

ARGUMENT AND CITATION OF AUTHORITIES UPON QUESTIONS PRESENTED BY THESE SEVERAL APPEALS SEPARATELY.

Each of the claims involved in these five appeals is a distinct and independent cause of action.

Farmers' Loan and Trust Co. v. *Waterman*, 106 U. S. 265.

Tupper v. *Wise*, 110 U. S. 399.

Fourth National Bank v. *Stout*, 113 U. S. 686.

In addition to the general discussion above presented we desire to call attention to some points applicable to these appeals in severalty.

PITTSBURGH BESSEMER STEEL COMPANY (LIMITED.)

The claim of this appellee is a construction claim. It is for a balance due for steel rails laid in the track between Attica and Fair Oaks. The total amount of rails shipped by appellee was three hundred and fifty tons. (Record p. 762.)

None of these rails were shipped until after the mortgage to New was executed and recorded, and none of them were used in the construction of the railway until long after one million dollars of the bonds had been issued and pledged to Dull and McCormick.

The mortgage was recorded in November, 1881. The one million dollars of bonus were issued in December, 1881, and were pledged to Dull and McCormick on January 27, 1882. These rails were shipped January 10 and 12, 1882, but were not delivered to, or used by, the railway company until the summer or fall of 1882.

(Record pp. 767 and 770.)

When these rails were shipped appellee drew a draft on the railway company for payment. The draft was returned protested. Appellee, by its agent, then procured Mr Conklin to pile the rails in the yard at Goodland, Ind.,-they having been shipped to that point,- and give appellee an individual receipt for the rails. Conklin was Superintendent of the railway when he gave the receipt, and appellee knew that fact, as is shown by the wording of the pencil memorandum on Conklin's receipt. (Record pp. 762 to 765, and 778.)

Sometime in the summer or fall of 1882 these rails were taken and used in the construction of the track. The contention of appellee is that this was a wrongful taking of the rails, and that they never were delivered to the railway company. If we were to admit that such taking was irregular and wrongful, that would not help appellee, because by the evidence in the record appellee admits that after it was well known to appellee's officers and agents that the rails had been put in the track, no steps were taken to recover possession of them. But, on the contrary, with full knowledge of the taking, appellee waived any wrongful act of the company in the taking, acknowledged the rightful possession of the rails by the railway company, and accepted from the company two payments upon their purchase price, the two payments amounting to $10,000.

(Record pp. 765 to 771.)

This appellee makes no charges whatever against the validity of the mortgage to New.

There is no pretence that appellee ever took, or attempted to take, any lien under the statute.

Under no possible view of the case can appellee assert any lien upon, or claim against, that part of the railway formerly belonging to the Chicago and Block Coal Railroad Company, or the proceeds of sale of that road. Yet, under this decree from which this appeal is taken, this apppellee is not only given a lien upon the new railway north of Attica prior and superior to the lien of the mortgage to New, but it is also given a lien upon the railroad south of Attica, formerly the Chicago and Block Coal Railroad, and its proceeds of sale. Under what principle of law or equity this can be done, we are wholly unable to ascertain.

If, therefore, this claim has a lien on the railway, and on the fund derived from its sale, prior and superior to the mortgage and bonds, it must be because an ordinary unsecured *construction claim* is prior and superior in lien to the lien of a mortgage duly executed and recorded, and bonds issued thereunder, for value, long before the construction claim accrued. This Court will surely not hold that to be the law. To do so would be to destroy the value of mortgage securities and commercial obligations, and overrule a long and unbroken line of adjudicated cases.

There is another reason why this claim cannot be held to be a lien. Appellee took the *personal obligation* of Henry Crawford as guarantor or surety for the Chicago and Great Southern Railway Company.

(Record pp. 645, 770 to 778.)

A vendor's equitable lien for unpaid purchase money is deemed to be waived by taking the obligation of a third party therefor. Taking other security for a debt will discharge a lien upon the property for that debt.

Boon v. *Murphy*, 6 Blackford's Reps. 272.
Haskell v. *Scott*, 56 Ind 564.
East, Adm'r v. *Ferguson & Co.*, 59 Ind, 172.
Brown v. *Gilman*, 4 Wheat. 290, 291.
Cordova v. *Hood*, 17 Wall. 6.
Pomeroy's Eq. Juris., Vol. 3, Sec. 1252 and notes.
Daniels on Negotiable Instruments, Third Ed., Vol. 2, Sec. 1279 (a).

Parsons on Contracts, 5th Ed. Vol. 3, p. 246.

Jones on Mortgages, 2d Ed., Vol. 1, Sec. 207.

Washburn on Real Property, Vol. 2, Book 1, Secs. 507, 508.

Fish v. *Howland et al.*, 1 Paige's Chancery Reports (N. Y.) 29, 30.

Loomis et al. v. *Davenport & St. P. R. Co. et al*,, 17 Fed. Rep. p. 301.

Vail v. *Foster*, 4 N. Y. (4 Comstock) p. 312.

THE CLEVELAND ROLLING MILL COMPANY.

It has already been shown in our statement of facts that the claim of this appellee is an ordinary unsecured *construction* claim for rails used in constructing the railway north of Attica. All of the rails shipped prior to November 29, 1881, were paid for by the company. (Record p. 864.) The mortgage was executed and recorded prior to November 29, 1881. (Record pp. 754 and 755.) The balance now due appellee accrued after the mortgage was executed and recorded. No lien under the Indiana statute was taken by appellee.

(Record p. 800.)

The money that was paid to appellee was paid directly out of the Drexel, Morgan & Co. loan. The officers and agents of appellee knew this fact when the money was paid and received, and knew that Drexel, Morgan & Co were loaning the money on the pledge of these bonds.

(Record pp. 799 to 803, 651, 652, 560 to 562.)

Whether the claim accrued before, or after, the mortgage was recorded, makes no difference. It is an unsecured claim—an ordinary floating debt of the company. The Cleveland Rolling Mill Company gave credit to the railway company for some rails to be used in the construction of the company's railway. The company paid nearly one-half of the debt, and failed to pay the balance. Do these facts give the claim priority in lien over a mortgage duly executed and recorded? No authority will be found supporting such a proposition. Yet this decree in favor of appellee has no support on any other ground.

This appellee is estopped from asserting any infirmity or invalidity in these bonds, because it received a large amount of money on its debt, with full knowledge that the money was being advanced by Drexel, Morgan & Co., relying on these bonds as security. This estoppel goes further than merely to prevent appellee from attacking the validity of the bonds. It also estops appellee *from claiming any lien on the railway prior and superior to the lien of these bonds.* To hold otherwise would be for a Court of equity to countenance wrong doing and put a premium on bad faith.

Upon what possible ground can this appellee claim a lien upon the Chicago and Block Coal Railroad? That road did not belong to the Chicago and Great Southern Railway Company when appellee furnished the rails for which payment is asked. When and how did appellee acquire a *lien* on that road? It is no answer to this question to say that the Chicago and Great Southern Railway Company owed a debt to appellee, and while it owed that debt it acquired the Chicago and Block Coal Railroad by consolidation, and that therefore appellee has a lien on the Chicago and Block Coal Railroad and the proceeds derived from its sale. Such a proposition assumes that every floating debt creditor of a railway company possesses a *lien* on the railway and property of the company. There is no law or authority in support of such a proposition. Yet this decree in favor of appellee is based on just that assumption. More than that, under this decree an unsecured, floating debt creditor of the company not only holds a lien on the railway, but his lien is prior, superior and paramount to the lien of a mortgage duly recorded before his debt had any existence, and is prior, superior and paramount to the lien of bonds issued under that mortgage and pledged for a large loan of money, part of which money this same floating debt creditor has received with full knowledge that it was obtained upon a pledge of the mortgage bonds. If this is law, our libraries are useless and the definitions and decisions in our books are mistakes and blunders.

THE SMITH BRIDGE COMPANY.

The claim of this appellee is for balance due on two bridges built by appellee for the railway company. It is admitted to be a *construction claim*. The claim accrued long after the mortgage was executed and recorded, and long after one million dollars of bonds secured by it had been issued and pledged for value.

No lien whatever was taken by this appellee under the statutes of Indiana.

Appellee has been paid $18,850 in part payment for the two bridges. These payments were made in June and August, 1883. (Record p. 808 and 809.)

This appellee knew of the bonds being pledged to Drexel, Morgan & Co., and knew that the payments made were part of the money obtained by that pledge of bonds. No charge is made by this appellee against the validity of the bonds. In our statement of facts we cited the pages of the record proving the above facts.

There are some questions peculiar to this appeal not involved in either of the other appeals here presented.

1. The chief contention of appellee is that by the contracts under which these bridges were built the ownership of the bridges remains in appellee until full payment is made. The contracts in full appear in the record. (Record pp. 816 and 818.)

It is on this theory of the contracts that a lien on the fund arising from the sale of the railway, in preference to the lien of the mortgage bonds, is claimed. We are well aware that this Court has often held that a railway mortgage attaches to loose and movable property,—such as locomotives, cars, and the like,—subject to such conditions and liens as may pertain to the property when acquired by the railway company. In other words, this Court holds, in respect to such loose property, susceptible of separate ownership, that the railway mortgage attaches only to such interest in it as the railway company acquires.

But those decisions do not apply in this case. This Court has just as often and as clearly held that a railway mortgage does attach to, cover and hold any and all material that becomes affixed to, and a part of, the railroad superstructure, utterly regardless of any such conditions or stipulations in the contract under which such material is furnished.

The following decisions are exactly in point, and seem decisive of this question.

Galveston Railroad v. *Cowdrey*, 11 Wall. 480, 482.
Pierce v. *Emery*, 32 N. H. 484.
United States v. *New Orleans Railroad*, 12 Wall. 365.
Dunham v. *Railway Company*, 1 Wall. 254.
Dillon v. *Barnard*, 21 Wall. 440.

It would be difficult to distinguish this case from the cases of *Galveston Railroad* v. *Cowdrey* and *Pierce* v. *Emery*, *supra*, except that instead of rails put down on the company's road, as in those cases, in this case the material affixed to the railway property is bridges, which are far more permanently attached to the reality than rails laid in the track. Bridges are far less susceptible of removal than rails.

In the case of *Galveston* v. *Cowdrey*, *supra*, the Court said:

"The rails put down on the company's road became a part of the road. The road itself was included in the mortgages to complainant. Pulsford, by allowing his property to go into, or become part of, the road consented to its being covered by the mortgages in question. He acquired no lien which can displace them. We have no hesitation in saying that Pulsford's claim to priority cannot be maintained."

Supposing in place of rails in the above quotation, we insert the word "bridges," and instead of Pulsford insert the name of this appellee, would not the decision as quoted be exactly applicable to this case?

In *Pierce* v. *Emery* it was decided that the owner of rails which were laid in the track under a special agreement that they could be taken up if not paid for, acquired no rights against a previous mortgage.

No clearer definition of the line of distinction between movable property to which the mortgage attaches, subject to all conditions and encumbrances then pertaining to it, and materials affixed to, and made part of, the railway superstructure, will be found than that given in the case of *United States* v. *New Orleans Railroad*, 12 Wall., *supra.* In that case the United States had sold to the railway company some locomotives under a conditional contract of purchase, by the terms of which the title in the locomotives was to remain in the United States until full payment was made. In deciding that the United States did retain its title, and that the mortgage did not attach to the locomotives freed from the condition in the contract of purchase, the Court say:

"Had the property sold by the government to the railroad company been rails, as in the case of the *Galveston Railroad Company* v. *Cowdrey*, or any other material which became affixed to and a part of the principal thing, the result would have been different. But being loose property susceptible of separate ownership and separate liens, such liens, if binding on the railroad company itself, are unaffected by a prior general mortgage given by the company, and paramount thereto."

These decisions remain the unquestioned law. Unless they are overruled, the decree in favor of this appellee cannot be sustained. The bridges put down by appellee are surely a part of the "principal thing." They are part of the railway superstructure and form part of its track.

The claim that possession has never been delivered is altogether untenable, in view of the facts proved and appearing on the face of this record. Upon this point the decree is contrary to law, and should be reversed.

2. There is another reason why this decree in favor of the Smith Bridge Company should be reversed. The decree is based on the assumption that appellee has a *lien* on the railway and the proceeds arising from its sale, either on the ground that general floating debt creditors have a lien superior to the lien of a duly recorded mortgage,—which seems to be the view of the law adopted by the Circuit Judge in rendering the decrees here appealed from,—or, on the ground that the contracts in this particular case give this appellee a lien superior to the lien of the mortgage.

We have already seen that the contracts will not support this decree under the decisions of this Court. As to the other ground of supposed or alleged lien, we claim that even if a lien exists in favor of general floating debt creditors, this appellee has *waived* and *lost* such lien. When these contracts were made, appellee required and obtained the *personal guaranty* of Henry Crawford on each of these contracts. (Record pp. 817 and 818.)

This guaranty was doubtless exacted and taken by appellee in view of the fact that the conditions in the contract would not hold the property the instant it became part of the railway superstructure and track. Appellee still holds this guaranty.

Upon an adjustment of accounts after the bridges were completed and in use, appellee took the *personal check* of Henry Crawford for the balance due, which check appellee still retains. If these transactions do not amount to a waiver of any supposed or alleged lien, it would be difficult to find any state of facts that would constitute a waiver. The authorities on this point are cited in our discussion of the Pittsburgh Bessemer Steel Company appeal, *supra*, pages 77, 78.

3. The Smith Bridge Company claims that the second clause of the contract of December 26, 1884, between Crawford and Porter (Record p. 913) creates or admits a lien on the property and purchase money fund in favor of appellee. A careful reading of that clause will convince the Court that it gives no support whatever to the asserted lien of appellee. As has been stated, by the contract of December 26, 1884, Crawford sold to Porter and associates his *right of redemption in the bonds*,—the legal title and possession of the bonds having been bought by Porter from Drexel, Morgan & Co. In selling his right to redeem the bonds Crawford made the best terms he could with Porter and associates to protect his second pledge of the bonds to the First National Bank. As soon as this contract was made Crawford assigned all his interest in it to the First National Bank. By this second clause upon which appellee relies, the parties were providing, *as between themselves*, for payment of such claims as might finally be held prior and superior to the mortgage debt.

The words of this clause create no lien in favor of any creditor. They admit no lien in favor of the Smith

Bridge Company. The clause carefully defines that it is only to apply to claims "which the Court may decide shall be equitably payable out of the proceeds of the sale of the said line of railway prior to the payment of the said bonds or coupons." In another part of the same clause it limits the contract to a provision for the payment only of claims "which the Court may decide must be paid for in preference to said bonds."

We fail to see how appellee can consistently claim that this clause containing such strict and positive limitations creates or admits any lien in favor of appellee.

Our contention is that the decree of the Circuit Court in favor of appellee is erroneous, and should be reversed. We feel convinced that this Court on this appeal will not hold that the claim of appellee is one that must be paid in preference to the claim of the mortgage bonds.

All that has been said in our presentation of points and authorities touching questions common to the five appeals here presented, applies to this appeal.

CRERAR, ADAMS AND COMPANY.

There is nothing peculiar in the claim of this appellee. It is an ordinary, unsecured debt of the railway company. It accrued long after the mortgage was recorded, and after the bonds had been issued and pledged to Dull and McCormick, and repledged to Drexel, Morgan & Co. as security for their loan of $350,000. It is a debt for materials used in the construction of the railway north of Attica. The credit was given to the Chicago and Great Southern Railway Company in appellees ordinary course of business. No security was asked. No statutory lien was taken.

(Record pp. 91 to 95 and 806.)

There is not a circumstance or fact connected with this claim or its presentation to the Circuit Court tending in any degree to distinguish it, in the principles of law applicable to it, from any general unsecured floating debt of any railway company. Every question arising on this appeal has already been presented in the discussion of questions common to these five appeals. The decree from which this appeal is taken must rest solely on the assumption that a general unsecured *construction debt* of a railway company is a *lien* upon the railway prior and superior to the lien of the mortgage and bonds of the company, recorded, issued and negotiated to innocent holders for value long before the construction debt accrued. There is no other ground for this decree to rest upon. To sustain the decree on that ground would be to overturn a long line of decisions of this Court hereinbefore cited, and many decisions of other Courts of last resort, and relieve railroad mortgages and bonds of their value as commercial securities.

VOLNEY Q. IRWIN.

The appeal from the decree in favor of Irwin presents one question not presented by either of the other appeals here presented.

Irwin's claim is for constructing grade for this railway in Warren and Benton Counties. It is a construction claim. The contract was made by Irwin directly with the Chicago and Great Southern Railway Company in November, 1881, a few days after the date of the mortgage to New, Trustee, but Irwin himself testifies that substantially all of his work was done after March 18, 1882. He completed his work in the fall of 1883. Irwin's work came to $51,681.64. He has been paid $40,231.34, leaving $11,450.30 and interest thereon unpaid. A large part of the money Irwin received came from the Drexel, Morgan & Co. loan on the pledge of the mortgage bonds. Irwin knew that he was receiving money advanced by Drexel, Morgan & Co. on the security of the mortgage bonds. He was told by President Foster in the spring of 1882 that the bonds had been issued. (Record pp. 20, 536 to 545, 652, 653, 786 and 787.)

Under this state of facts the arguments adduced and the authorities cited in our discussion of questions common to these five appeals, apply directly to this appeal from Irwin's decree. Those arguments and authorities need not be here repeated.

There is an additional reason why this decree in favor of Irwin is erroneous and ought to be reversed.

This decree must rest on the theory that Irwin's claim is a *lien* on the railway, and the proceeds arising from its sale, prior and paramount to the lien of the mortgage. There is no evading this position, for it is absolutely certain that unless it constitutes a *lien* on the property, the claim of Irwin cannot be paid in preference to the mortgage bonds, because it cannot be questioned that the mortgage is a specific lien on the entire railway and property and must be paid in full before debts *without lien* are paid at all. To entitle it to payment in preference to the mortgage bonds, Irwin's claim must, therefore, be held to be a *lien*,—and not only that, it must be held to be prior and paramount in lien to the lien of the mortgage.

If, therefore, we can establish the fact that Irwin has once had a lien on the railway for his debt, and has exhausted that lien, then it will be plain that this decree is erroneous and should be reversed, because Irwin's claim has no lien on the railway to support the decree.

Just here permit us to suggest the query: If general, floating debt, *construction claims* against a railway company have a *lien* on the railway prior and superior to the lien of a duly recorded mortgage and bonds issued and negotiated thereunder, to innocent third parties for value,—which seems to be the theory adopted by the Circuit Judge in rendering these five decrees appealed from,—why was it ever found necessary for State Legislatures to protect contractors and material men furnishing labor and materials for the construction of railways by enacting what are called Contractor's and Mechanic's Lien Laws? This question suggests quite clearly that if these decrees are correct, and in accordance with law and justice, not only all the Courts of our country, but also the Legislatures of many of our States, have utterly failed to understand the law.

If there is a lien in favor of general creditors that outranks a mortgage without any statutory enactments, why enact mechanic's and builder's lien laws?

In October, 1883, Irwin filed his notice of lien under the Indiana statute in Warren County and claimed a lien for the *entire amount of his work*, giving no credit for payments. In the same month he brought foreclosure suit in Warren Circuit Court, in his complaint asking decree for the entire amount of his work in *both Counties*, In March, 1884, the cause was heard and determined. At the request of Solicitors for the railway company, the Court rendered a special finding of facts. In this special finding the Court expressly *finds that all the work of Irwin then remaining unpaid for was done in Warren County*, and that, therefore, Irwin could only claim a lien on the grade by him constructed in Warren County. This special finding of the Warren Circuit Court effectually disposes of the gratuitous finding of the Master in his special supplemental report upon the claim of Irwin, in which he takes pains to suggest that Irwin filed notice of lien also in Benton County, and that the three miles of work done in Benton County, is worth all of the debt remaining due to Irwin. There is not in the record a particle of proof that Irwin ever brought any suit or attempted in any way to protect and enforce the notice of lien filed by him in Benton County. He does not even swear that he ever filed a lien in Benton County. Under the statute his lien, even if he filed notice in Benton County, lapsed and became absolutely void upon his failure to bring foreclosure suit within one year from the date of filing the notice. But even if he had brought suit in Benton County, under the special finding of the Circuit Court of Warren County, he could not have recovered in the Benton Circuit Court, because the Circuit Court of Warren County finds expressly that all the work done by Irwin in constructing grade in Benton County has been fully paid for by the railway company.

The decree rendered by the Warren Circuit Court followed the special finding of facts above mentioned and forecloses the lien in favor of Irwin on some ten or twelve miles of railway in Warren County. The amount found due to Irwin by the decree was $11,815.70, including interest to date of decree.

(Record pp. 786, 789, 790.)

In June, 1884, execution was issued on this decree. On July 12, 1884, the part of the railway described in the decree was sold by the Sheriff of Warren County and bought by appellee Irwin for $500, and the Sheriff issued to Irwin a certificate of sale.

On July 10, 1885, just at the close of the redemption year, John C. New, Trustee, as mortgagee of the railway, redeemed the property bought in by Irwin, as by law he was authorized to do, and received from the Clerk of the Warren Circuit Court a certificate of redemption. (Record pp. 778 and 793.)

By taking his lien under the statute, and foreclosing that lien and selling the property covered by the lien, Irwin certainly very clearly recognized and *admitted the fact that he had no other lien on the railway for his debt.*

It is settled law that Irwin's claim,—his entire debt,—was merged in his foreclosure decree. He no longer held a claim. He held a decree against the railway company for $11,815.70, and a decree foreclosing the only lien he had, or ever claimed to have, upon the property of the railway company.

When he caused the property covered by his decree to be sold at foreclosure sale he exhausted his lien upon the property so sold. His statutory lien, when perfected, became a lien superior and paramount to the lien of the mortgage to New, Trustee, *as to that part of the railway covered by his lien.* He could not, under our statute, acquire a lien on any other part of the railway.

When he had the property covered by his decree sold and bought it for less than the amount of his decree, the remainder of his decree remained a *judgment lien* upon the remainder of the railway and property belonging to the railway company, but the lien of his judgment is junior, inferior and subordinate to the lien of the mortgage to New, Trustee, as to all the railway property not covered by his statutory lien. Of that there can be of doubt.

New, as mortgagee, redeemed from Irwin the part of the railway sold at foreclosure sale under Irwin's decree. It is quite obvious Irwin now has no lien upon any part of the railway superior and paramount to the lien of the mortgage to New, Trustee, unless the redemption by New from Irwin brought the property redeemed back under the lien of Irwin's foreclosure decree under which the redeemed property had been once sold on Irwin's execution. The redemption law of Indiana contains no provision bringing about a result so absurd and unjust. All redemption laws, so far as we have been able to ascertain, contain a provision that if the *judgment debtor* redeems property sold on execution, such redemption, in effect, *vacates the sale* and brings the property back under the lien of the unpaid part of the judgment, just as though no sale had taken place. Even if no such provision in words could be found in the redemption law, still the legal result would be the same, because a redemption by the judgment debtor makes the property redeemed *his property* again, and the unpaid part of the judgment of the judgment creditor upon whose execution the property was sold instantly attaches to the property when it again becomes the property of the judgment debtor. But this principle does not apply at all when the redemption is made,—not by the judgment debtor,—but *by another lien holder*—another creditor of the same judgment debtor.

In this case the Master gravely holds that the redemption law of Indiana means and enacts that if a creditor or lien holder of a common debtor redeems property sold on the execution of another creditor of that same common debtor, the redemptioner does not redeem for his *own benefit*, but for *the benefit of the creditor on whose execution the redeemed property was sold.*

The Legislature of Indiana may have passed some very crude and foolish statutes, but we protest against the charge that it ever passed a law containing such a provision as that.

The present redemption statute of Indiana went into force April 11, 1881. In many of its provisions it is entirely different from any former redemption law of the State. It is an improvement on our former laws, and embodies the best provisions of the laws of our sister States on this subject. This statute has never been construed by our State Supreme Court, so far as we have been able to ascertain. This probably happens for two reasons: One, because it has only been in force a comparatively short time; the other, because the law is very carefully worded, is plain in its meaning, and covers every phase of the subject.

The law is quite lengthy. It is not necessary to print it all. The first four sections provide what the certificate of purchase shall contain, where it shall be recorded, etc.; that the owner shall be entitled to possession for one year after date of sale; how the owner may redeem, and how an undivided interest may be redeemed.

The fifth section provides that redemption by the owner—the judgment debtor—*vacates the sale* and makes the property "subject to sale on execution as if such sale had not been made."

Secs. 776, 770, R. S. Ind. 1881.

The parts of the law bearing upon the question under consideration are as follows:

771. OWNER FAILING, JUDGMENT-CREDITOR MAY REDEEM. 6. In the absence of a redemption as above provided, by any owner, part owner, or person claiming under either, the real estate sold, or any parcel or parcels thereof sold in one body, may be redeemed at any time within one year from the date of sale, by any judgment-creditor, his executors, administrators, or assigns holding a judgment or decree against the defendant whose title or interest shall have been sold, which, at the time he or they offer to redeem, shall be a lien upon such title or interest, and which shall be junior to the judgment under which the property was sold. Such redemption may be made by any person entitled thereto, without regard to the order of priorities of liens; and successive redemptions may be made by the several persons entitled to redeem, in the manner hereinafter provided.

772. MANNER OF REDEMPTION BY JUDGMENT-CREDITOR—SUCCESSIVE REDEMPTIONS. 7. Any judgment-creditor authorized by the preceding section to redeem, who shall desire to redeem from the purchaser at such sale, shall first file with the Clerk of the Court in whose office the certificate of purchase is required to be recorded, a statement, duly verified by his affidavit of his agent or attorney, showing the Court in which his judgment is rendered, the parties thereto, amount and date thereof, and amount due and unpaid thereon, and, if less than the whole, the parcel or parcels thereof which he desires to re-

deem, and the sale from which he desires to redeem. He shall thereupon pay to such Clerk, for the use of such purchaser, his executor, administrator, or assigns, the amount paid by such purchaser for the real estate or portion thereof sought to be redeemed, as shown by the record of the certificate of purchase in the "Lis pendens record" in the office of said Clerk, and interest at the rate of eight per cent. per annum thereon from the date of his purchase. Upon receipt of the redemption-money and interest, the Clerk shall make out and sign a certificate, showing the date and amount of the redemption, the land or part thereof redeemed, the judgment in right of which the redemption was made, and the execution under which the sale was made; and, after recording such statement, affidavit, and certificate in the "Lis pendens record," shall deliver such certificate to the redemptioner. When such redemption has been made, any other judgment creditor, entitled and wishing to redeem, may do so by filing with said Clerk a statement and affidavit similar to those above provided for, and containing, in addition, the name of the preceding redemptioner from whom he wishes to redeem, and the particular parcels he wishes to redeem. He shall thereupon pay to such Clerk, for the use of the last preceding redemptioner, if the lien of the latter be junior to that of the party now redeeming, his redemption-money and interest at the rate of eight per cent. per annum thereon and his costs of redemption; or if his lien be senior to that of the party seeking to redeem, he shall pay to the Clerk, for the use aforesaid, the judgment of the last redemptioner on account of which his redemption was made and interest thereon, and his costs of suit in addition to the amounts aforesaid; and thereupon such Clerk shall issue to him a certificate similar to the one above provided for, and record the statement, affidavit, and certificate in the "Lis pendens record" aforesaid. Subsequent redemptions may be made by other judgment-creditors entitled to redeem, substantially in the manner and upon the terms above provided; and when the redemption of any parcel is made from a prior redemption, the amount to be paid by the redemptioner shall be in the same proportion as provided in section three above. When any person claims the right, as the executor, administrator, or assignee of a judgment plaintiff, to redeem, he shall file a verified statement of the facts, showing his right to redeem; and if his right to where such redemption is made, he shall file certified copies of such records with his statement; all of which shall be properly indorsed and filed by the Clerk.

773. VENDITIONI EXPONAS BY LAST REDEMPTIONER—PROCEEDINGS ON SALE. 8. If, during the year hereinbefore allowed for redemption, the real estate, or interest therein, sold

The law is quite lengthy. It is not necessary to print it all. The first four sections provide what the certificate of purchase shall contain, where it shall be recorded, etc.; that the owner shall be entitled to possession for one year after date of sale; how the owner may redeem, and how an undivided interest may be redeemed.

The fifth section provides that redemption by the owner—the judgment debtor—*vacates the sale* and makes the property "subject to sale on execution as if such sale had not been made."

Secs. 776, 770, R. S. Ind. 1881.

The parts of the law bearing upon the question under consideration are as follows:

771. OWNER FAILING, JUDGMENT-CREDITOR MAY REDEEM. 6. In the absence of a redemption as above provided, by any owner, part owner, or person claiming under either, the real estate sold, or any parcel or parcels thereof sold in one body, may be redeemed at any time within one year from the date of sale, by any judgment-creditor, his executors, administrators, or assigns holding a judgment or decree against the defendant whose title or interest shall have been sold, which, at the time he or they offer to redeem, shall be a lien upon such title or interest, and which shall be junior to the judgment under which the property was sold. Such redemption may be made by any person entitled thereto, without regard to the order of priorities of liens; and successive redemptions may be made by the several persons entitled to redeem, in the manner hereinafter provided.

772. MANNER OF REDEMPTION BY JUDGMENT-CREDITOR—SUCCESSIVE REDEMPTIONS. 7. Any judgment-creditor authorized by the preceding section to redeem, who shall desire to redeem from the purchaser at such sale, shall first file with the Clerk of the Court in whose office the certificate of purchase is required to be recorded, a statement, duly verified by his affidavit of his agent or attorney, showing the Court in which his judgment is rendered, the parties thereto, amount and date thereof, and amount due and unpaid thereon, and, if less than the whole, the parcel or parcels thereof which he desires to re-

deem, and the sale from which he desires to redeem. He shall thereupon pay to such Clerk, for the use of such purchaser, his executor, administrator, or assigns, the amount paid by such purchaser for the real estate or portion thereof sought to be redeemed, as shown by the record of the certificate of purchase in the "Lis pendens record" in the office of said Clerk, and interest at the rate of eight per cent. per annum thereon from the date of his purchase. Upon receipt of the redemption-money and interest, the Clerk shall make out and sign a certificate, showing the date and amount of the redemption, the land or part thereof redeemed, the judgment in right of which the redemption was made, and the execution under which the sale was made; and, after recording such statement, affidavit, and certificate in the "Lis pendens record," shall deliver such certificate to the redemptioner. When such redemption has been made, any other judgment creditor, entitled and wishing to redeem, may do so by filing with said Clerk a statement and affidavit similar to those above provided for, and containing, in addition, the name of the preceding redemptioner from whom he wishes to redeem, and the particular parcels he wishes to redeem. He shall thereupon pay to such Clerk, for the use of the last preceding redemptioner, if the lien of the latter be junior to that of the party now redeeming, his redemption-money and interest at the rate of eight per cent. per annum thereon and his costs of redemption; or if his lien be senior to that of the party seeking to redeem, he shall pay to the Clerk, for the use aforesaid, the judgment of the last redemptioner on account of which his redemption was made and interest thereon, and his costs of suit in addition to the amounts aforesaid; and thereupon such Clerk shall issue to him a certificate similar to the one above provided for, and record the statement, affidavit, and certificate in the "Lis pendens record" aforesaid. Subsequent redemptions may be made by other judgment-creditors entitled to redeem, substantially in the manner and upon the terms above provided; and when the redemption of any parcel is made from a prior redemption, the amount to be paid by the redemptioner shall be in the same proportion as provided in section three above. When any person claims the right, as the executor, administrator, or assignee of a judgment plaintiff, to redeem, he shall file a verified statement of the facts, showing his right to redeem; and if his right to where such redemption is made, he shall file certified copies of such records with his statement; all of which shall be properly indorsed and filed by the Clerk.

773. VENDITIONI EXPONAS BY LAST REDEMPTIONER—PROCEEDINGS ON SALE. 8. If, during the year hereinbefore allowed for redemption, the real estate, or interest therein, sold

by the Sheriff, or any parcel or parcels thereof sold separately, shall be redeemed by any judgment-creditor, as aforesaid, and remain unredeemed by the owner or part owner, or by any person claiming under them, at the expiration of such year, the last redemptioner shall be, immediately thereafter, entitled to sue out an execution, in the nature of a *venditioni exponas*, upon his judgment, by virtue of which he made his redemption. Such execution shall recite the judgment upon which the original sale was made, naming the Court wherein rendered, the parties thereto, the date and amount thereof, the dates of the execution and sale, and name of the owner, the price paid by the purchaser or purchasers for the real estate, if sold in one body, or for each parcel thereof, if sold in parcels, or interest therein redeemed by paid redemptioner, the amount paid by such redemptioner in redemption thereof, date of payment, and cost of redemption, and the judgment of said redemptioner, under which his redemption was made, and amount due thereon; which execution shall be issued to the Sheriff of the county in which such real estate is situate, commanding him to sell the real estate, interest therein, or parcels thereof, redeemed by said redemptioner, to the highest bidder; and, after paying the costs of sale, and paying to such redemptioner his redemption-money, and interest thereon at the rate of eight per cent. per annum, and his costs of redemption, and the amount of principal, interest, and costs due on his judgment, pay the residue into the office of the Clerk issuing such execution. Such real estate shall be sold upon like notice as in other cases, but without offering the rents and profits, and without regard to appraisement laws; and if redeemed in parcels, shall be offered in like parcels; and the redemptioner suing out such execution shall be deemed the bidder for the amount paid by him in redemption thereof, and interest thereon at the rate of eight per cent. per annum, his cost of redemption, and the costs of sale; and, if no one bid more, he shall be deemed the purchaser for that amount, and the Sheriff shall, immediately upon the perfecting of such sale, execute to the purchaser a conveyance of the premises, which shall convey to the purchaser all the title and interest of the owner sold under the original execution. If such sale should fail to satisfy the execution in full, the residue, may be levied and collected of any other property of the defendant thereto, as in other cases. If execution upon the judgment of the last redemptioner be stayed at the expiration of the year aforesaid, or there be installments on his judgment or decree, not then due, he shall nevertheless, be entitled to execution, as aforesaid, for the amount due him on account of his redemption, which shall be without prejudice to his right to sue out further final process on his judgment or decree; and any surplus remaining, after satisfying the costs of sale and amount due him on account of redemption, shall be paid to the Clerk, for distribution, as hereinafter provided. Such sale shall discharge the lien of the judgment on which the original sale was was made, and the liens of all intervening judgments and decrees; and if any surplus remain after satisfying the execution upon the last sale, it shall be distributed by the Court from whence said execution issued, among the judgment-creditors whose liens are junior to that under which the original sale was made, according to their original priorities and equities. If the judgment on which such execution issues shall have been rendered in a Court other than that in the Clerk's office of which the statement, affidavit, and certificate of such last redemptioner are required to be filed, he shall, before the issuing of such execution, procure duly certified copies of such statement, affidavit, and certificate, and cause them to be filed and recorded in the "Lis pendens record," kept in the office of the Clerk issuing the execution; and said writ shall contain the recitals and mandate hereinbefore required.

774. MANNER OF REDEMPTION BY LIENHOLDER WHOSE LIEN IS RECORDED. 9. Any person having a lien, otherwise than by judgment, upon the real estate, or any parcel or parcels thereof sold in one body, may, at any time within one year from said sale, and after he shall have had his lien duly recorded where, by law, the recording thereof is provided for, redeem the same from the purchaser at said sale, or from any prior redemptioner, and redemption thereof may be made from him upon the same terms and conditions as hereinbefore required in cases of redemption by judgment creditors; and if, at the expiration of one year from the sale on execution, no one shall have redeemed from him, and his lien remains unforeclosed, he shall retain a lien on the real estate so redeemed by him, as of the date of the judgment on which said sale was made, and may enforce the same in the suit to foreclose or enforce his lien, or by an independent action; and any sale of said real estate in pursuance thereof shall be absolute, and the purchaser immediately entitled to a conveyance, having the same effect as if his lien, at the time he redeemed, had been in judgment.

R. S. Ind., 1881.

1. Under this law—Sec. 771, *supra*,—a judgment creditor who sells the property of his judgment debtor at execution sale, *has no right to redeem from the purchaser at his execution sale, or from any subsequent redemptioner redeeming the property sold at his execution sale.* The right to redeem is only given judgment creditors holding

judgments "*junior to the judgment under which the property was sold.*"

2. If a subsequent redemptioner seeks to redeem from a preceding redemptioner, whose lien or judgment is senior to the lien or judgment of the subsequent redemptioner seeking to redeem, *he must pay the preceding redemptioner's judgment and interest and costs of suit in full.* If the preceding redemptioner's judgment is *junior* to that of the subsequent redemptioner seeking to redeem, the subsequent redemptioner is only required to pay the preceding redemptioner his redemption money, with interest and costs of redemption. Sec. 772, *supra.*

3. The law provides for no re-sale until after the redemption year expires. The last redemptioner can then issue execution on his judgment and sell the property. The proceeds of such re sale are to be applied (1) in payment of costs, (2) in payment of the redemption money and interest and costs of redemption; (3) *in payment of the amount of principal, interest and costs due the last redemptioner on his judgment*, the balance, if any, to be distributed among the judgment creditors "*whose liens are junior to that under which the original sale was made according to their original priorities and equities.*" No part of the proceeds of this re-sale can ever be received by the judgment creditor upon whose execution the original sale was made. He exhausts his lien on the property sold by the sale on his execution." *Such sale* (by the last redemptioner) *shall discharge the lien of the judgment on which the original sale was made*, and the liens of all intervening judgments and decrees."

Sec. 778, *supra.*

4. The mortgagee, or lien holder, otherwise than by judgment, has the same rights, and is given the same terms and conditions as are given to a *judgment creditor*. In all respects his lien is made to have "*the same effect as if his lien at the time he redeemed had been in judgment.*

Sec. 774, *supra.*

Under these plain provisions of our law it is utterly impossible to hold that the redemption by New as mortgagee brought the property redeemed back under the lien of Irwin's decree. New held a mortgage lien duly recorded. His lien was in date senior to Irwin's lien, but mechanic's and contractors liens, under our law, cut under existing mortgages, and, although junior in date, they are senior in lien.

Brooks v. *Railway Co.*, 101 U. S. 448.

Hence, as between Irwin and New, New, as mortgagee, was a junior lienor to Irwin *as to the property covered by Irwin's statutory lien*, which lien, by our statute—which differs from the Iowa statute, considered by this Court in *Brooks* v. *Railway Company*, *supra*,—is limited to grade constructed by Irwin.

Acts Ind. Legis. 1883, p. 143, Sec. 12, act of March 6, 1883.

We have already seen that by the redemption law New, as mortgagee, when he redeemed from Irwin's execution sale, became possessed of all the rights of, and occupied the position of, a judgment creditor holding a judgment junior in lien to the lien of Irwin's decree upon which Irwin had caused the property redeemed by New to be sold.

judgments "*junior to the judgment under which the property was sold.*"

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Acts Ind. Legis. 1883, p. 148, Sec. 12, act of March 6, 1883.

We have already seen that by the redemption law New, as mortgagee, when he redeemed from Irwin's execution sale, became possessed of all the rights of, and occupied the position of, a judgment creditor holding a judgment junior in lien to the lien of Irwin's decree upon which Irwin had caused the property redeemed by New to be sold.

sale, after payment of costs and Receiver's indebtedness, is far less than the amount of cash advanced in good faith by Drexel, Morgan & Co. on the pledge of these bonds as commercial securities. Surely this Court will not hold these *construction claims*, accrued after the mortgage was recorded, and after these bonds were issued and pledged for value, to be liens prior and superior to the lien of the mortgage and bonds to the extent of the Drexel, Morgan & Co. loan and interest thereon.

We ask that each of these five decrees in favor of these five appellees may be in all things reversed.

Respectfully submitted,

J. E. McDONALD,
JOHN M. BUTLER,
A. L. MASON,
Solicitors for Henry H. Porter, Appellant,
By JOHN M. BUTLER.

Indianapolis, Ind., December 11, 1886.

120-649

[illegible]
FILED
DEC 22 1886
JAMES H. McKENNEY.
CLERK.

No. 1,280.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1886.

HENRY H. PORTER
vs.
THE PITTSBURGH BESSEMER STEEL
COMPANY, LIMITED, AND OTHERS.

Appeals from the Circuit Court of the United States for District of Indiana.

STATEMENT OF CASE, ASSIGNMENT OF ERRORS, AND BRIEF OF APPELLANT.

O. PECKHAM,
R. B. F. PIERCE,
Solicitors for Appellant.

BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE ST., CHICAGO

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1886.

NO. 1280.

HENRY H. PORTER *vs.* THE PITTSBURGH BESSEMER STEEL COMPANY, LIMITED, AND OTHERS.	**Appeals from the Circuit Court of the United States for District of Indiana.**

STATEMENT OF CASE.

On October 27, 1884, Hack and others claiming to be creditors by reason of work done in the original construction of the Chicago and Great Southern Railway, instituted an action in the Circuit court of Jasper County, Indiana. The complaint alleged that the corporation "exclusive of bonds secured by mortgage" owed over $100,000, and was in imminent danger of insolvency. (Rec., 13.)

The plaintiffs did not claim either a statutory or equitable lien on the railway. They prayed that an account might be taken of all corporate debts and a receiver appointed to preserve the property, which was described as eighty miles of completed and forty miles of partially graded railway.

On the same day a receiver was appointed.

On April 4, 1885, this suit was, on petition of Porter, removed to the Circuit court of the United States for the District of Indiana. (Rec., 11, 16.)

On March 9, 1885, Porter had filed his original bill of foreclosure in the latter court, against the railway company, John C. New and others, claiming that on November 1, 1881, the said corporation duly executed and delivered to New, as trustee, a mortgage conveying all its railway property of every kind, from Fair Oaks to Brazil, to secure an issue of two million dollars six per cent coupon bonds. That subsequently, in March, 1883, the Chicago and Great Southern Railway Company consolidated with and absorbed under its title, the Chicago and Block Coal Railroad, extending, as completed, from Attica, in Fountain county, to Yeddo, in the same county, and as partially constructed, between the last named point and Brazil, in Clay county.

Afterwards, on April 9, 1883, by way of further assurance of title, the consolidated Chicago and Great Southern Railway Company executed and delivered unto said New a supplemental mortgage to cover the entire road and property belonging to the consolidated corporation as security for the same issue of bonds.

That such two mortgages were duly recorded in each of the counties wherein the road was situated shortly after their respective dates; $1,200,000 of said first mortgage bonds had been issued and negotiated, for value and interest had never been paid thereon. Complainant was the owner and holder of all the bonds and coupons; he had requested New to enforce the security, but he had declined. The bill contained the usual prayer for a receiver and a foreclosure. (Rec., 1.)

The original and supplemental deeds of trust (Rec., 747, 755) are shown to have been duly recorded in each county, beginning in Jasper county on November 19, 1881.

The articles of consolidation between the Chicago and Great Southern railway and the Chicago and Block Coal railway were filed and recorded on April 7, 1883, in the office of the secretary of state at Indianapolis. Article sixth thereof recites: " And it is especially declared that " the issue of two million dollars of bonds made by the " party of the first part hereto and secured by a mortgage " or trust deed executed to John C. New, of Indianapolis, " Indiana, and dated November 1, 1881, as the same now " appears of record in the counties of Clay, Parke, Fountain, Warren, Benton, Newton and Jasper, is fully assumed by the consolidated corporation and the mortgage " or trust deed recorded as aforesaid for the purpose of " securing the payment of said bonds and interest thereon, *shall constitute the first lien upon all and singular* " *the railroad of said consolidated corporation* in said last " named counties from Brazil northwardly to the junction " with the L., N. A. & C. Ry.," etc. (Rec., 744.)

An order was entered on April 18, 1885, consolidating the foreclosure case with the Hack creditors bill and on the same day a new receiver was appointed. (Rec., 30, 31.

On May 28, 1885, the railway corporation made answer admitting the substantial allegations of the bill. (Rec., 39.)

(1.) The Pittsburgh Bessemer Company (Limited) on August 11, 1885, filed its intervening petition alleging that it sold and shipped 357 tons of rails to Goodland, Indiana, to be held by a custodian until paid for by the railway company, but that the rails were without its knowledge or consent placed in the track. Petitioner has always claimed a lien for the price of the rails which were taken and laid before the issue of any of the bonds, and that Porter acquired the bonds with full notice of the petitioner's rights.

The statement of account shows the balance due after deducting $10,000 paid, was $12,944.20. (Rec., 71, 74.)

(2.) The Cleveland Rolling Mill Company, on March 12, 1886, filed its petition showing that the railway company bought rails of it for the construction of the road, amounting to $52,278.33, on which claim had been paid $22,634.36.

For the balance due, a judgment at law had been recovered on May 10, 1884, in the Circuit Court of the United States for the Northern district of Illinois, for $35,922.26, and that subsequently the petitioner sued upon that transcript of record in the Circuit Court of Benton county, Indiana, and on March 11, 1885, recovered a second judgment at law for $32,724.36 and costs. (Rec., 142, 145.)

(3.) The Smith Bridge Company, on December 29, 1885, filed its petition, showing that on October 26, 1882, it contracted to place upon the stone piers built by the railway, the bridge superstructure across the Wabash river, and on July 24, 1883, it again contracted to put up the superstructure of the bridge across Pine creek. The balance claimed to be due on both contracts was $21,637.54. The petition further claimed that in the agreement it was provided that the title to both superstructures was to remain in the bridge company until full payment was made. That Porter acquired the first mortgage bonds with full notice of such contracts, and that the title to said bridges was in petitioner. (Rec., 121–145.)

(4.) "Crerar, Adams & Co.," on October 2, 1885, filed a petition, alleging it was a creditor of the railway company to the amount of $7,809.94 for goods sold, beginning with January 12, 1883, as per account attached. (Rec., 91.)

(5.) Volney O. Irwin, who was named as a defendant to the original bill, filed a cross-bill and answer, alleging that on November 9, 1881, he made a written contract with the railway company to do the grading for the original construction of the road between Oxford and Attica; he began work on November 10, 1881, and completed it on September 15, 1883; at the time work was begun the mortgage to New had not been recorded; the grading done amounted to $55,000, on which the company had paid him about $43,000, leaving a balance due him of about $12,000. In October, 1883, he filed a notice under the Indiana statute, claiming a mechanic's lien on the portion of the railway constructed by him; he then brought suit in the Circuit court of Warren county, Indiana, to enforce this lien in both counties, and afterwards recovered a decree for $11,781.16, and a foreclosure of his statutory lien and ordering a sale of the road in Warren county to satisfy the debt. (Rec., 17, 69.)

To the petition of Irwin, a response was filed by Porter. (Rec., 153.)

It avers that he is the owner of the $1,200,000 bonds; that the articles of consolidation specifically recite that the mortgage to New is the first lien. The work done by Irwin was for the original construction of the road north of Attica, prior to the consolidation. Shortly after November 1, 1881, the railway negotiated to innocent holders $1,000,000 of the bonds and used all the money realized therefor in paying Irwin and others for their work, and Irwin personally obtained about $30,000 out of the moneys which constituted the consideration of the negotiation of such bonds. Afterwards he filed notice of mechanic's lien, then procured a decree foreclosing his lien and sold that portion of the road covered by his decree and bought the same. Subsequently Porter, to protect his interest as bondholder, and as fully authorized by the statute, paid into the Warren Circuit Court the necessary sum of money and redeemed the property. For all which reasons complainant denies that Irwin has any lien or priority on any part of the railway which is superior to complainant's lien as a bondholder. (Rec., 153.)

Porter prepared responses to the petitions of the Cleveland Rolling Mill Company and others, setting up specifically the general defenses and estoppels which existed against the allowance and priority of each of such claims, but the court refused to allow them to be filed. (Rec., 155 *et seq.*)

On August 17, 1885, a decree of sale was allowed by the district judge sitting at circuit, and by the sixth paragraph of the decree it was provided that the rights and liens of all parties or claimants should be transferred to the fund. (Rec., 77.)

On September 20, 1885, the circuit judge allowed Swan and Atkinson, claiming to be stockholders, to be made defendants, and then their answer was filed.

On October 12, 1885, the court ordered the first decree of sale to be set aside, and "as to so much of said "case as involves the validity of the mortgage and mort- "gage debts as the same are described in the bill of said "Porter and the defendants' answers, the defendants com- "plete the taking of their testimony on or before Novem-

" ber 20, 1885, and that the complainant Porter, complete
" the taking of his testimony in rebuttal within ten days
" thereafter." (Rec., 20.)

The answer and petition of Swan and Atkinson alleges that they were stockholders of the corporation and that the mortgage and bonds were fraudulent, without consideration, and void. (Rec., 82.)

On February 15, 1886, the court found against Swan and Atkinson and denied and dismissed their petition. (Rec., 129.)

They have never taken any appeal therefrom.

The answers and cross-bills of the Cleveland Rolling Mill Company and other creditors assailing the mortgage and bonds, copy almost literally the pleadings of Swan and Atkinson. (Rec., 42, 52.)

The material declarations are as follows: Prior to March 18, 1882, no work of any value had been done on the railroad; one Henry Crawford then became the owner of a majority of the stock and thereupon elected a board under his control, who before their election promised to carry out his wishes; in March, 1882, he caused said board to make a contract with him to construct the road and receive in payment $2,000,000 first mortgage bonds, $2,000,000 income bonds and $2,000,000 in full paid capital stock. That the work done by Crawford was inferior, and the fifty miles constructed by him was only worth $250,000 exclusive of the Attica and Pine Creek bridges and did did not cost to exceed that sum; the Block Coal road between Attica and Yeddo was of little or no value and Crawford had or could obtain it for a mere nominal consideration; after consolidation with that road, work was abandoned and a false report made by the contractor, whereas, "if a full, "truthful and complete report had been made of the "work, showing the actual amount paid therefor by said "Crawford, it would have appeared that the entire line "did not cost over $300,000, of which $150,000 was still "outstanding and unpaid, and that Crawford had not ex-"pended of his own means to exceed $150,000." With full knowledge of such facts, and when nothing was due, the board fraudulently issued and delivered the bonds in suit to Crawford; afterwards the bonds were pledged by Crawford for an individual loan of about $350,000 to Drexel, Morgan & Co., who then and there "had "knowledge of all the facts aforesaid;" thereupon Porter and his associates made an arrangement with Crawford by which the bonds were taken out of pledge and Crawford was to have the difference between $500,000 and the amount expended in acquiring and foreclosing the property and the profits arising from the extension of the road southwardly from Yeddo should be divided between Porter, Crawford and their associates; that Porter acquired his rights in the bonds with full notice of all these frauds.

The answer of the Cleveland Rolling Mill Company and others, reciting their claims against the property, declares "that the materials furnished for the building of "said railway by each of them respectively, was fur-"nished and the indebtedness therefor became due to "them, and each of them respectively, after the default "in interest on the bonds of said railway company, as set "forth and complained of by said complainant in his bill "of complaint." (Rec., 44.)

The prayer of the creditors' cross-bill is "that an ac-"counting may be had as to the cost of the work per-"formed and paid for by said Crawford upon the construc-"tion of said railroad and the market value of the Block "Coal road when it was acquired; and that "the original "and supplemental deeds of trust to New and the com-

"plainants' bonds issued thereunder, shall be declared "fraudulent and void, and the unpaid construction debts "shall be decreed to be a prior and first lien upon the "property." (Rec., 60.)

The testimony and the exhibits which were offered upon the issues raised by these answers and cross-bills are all in the record.

On February 16, 1886, a second decree of sale was rendered. (Rec., 129–134.)

The first paragraph orders the answer and petition of the stockholders Swan and Atkinson to be dismissed, reserving the question of costs against them. The second, third, fourth and fifth paragraphs declared the execution and record of the original and supplemental mortgages, about November 1, 1881, the issue of $1,200,000 bonds thereunder and their delivery to Crawford under the construction contract, and the subsequent transfer of the bonds and coupons to Porter; that interest on such bonds "issued and outstanding for value" to the amouut of $291,800 was due and unpaid and that said mortgages "are valid and binding obligations as against said railway "company and are a superior and paramount lien upon "all the railway property, lands, rights, privileges, im-"munities and franchises therein mentioned, and described "and thereby conveyed, excepting as hereinafter pro-"vided."

Paragraphs six and seven decree that receivers' indebtedness and "all unpaid valid claims against said railway "company for right of way, lands, labor, rolling stock, "material used in the construction or betterment or oper-"ation of said railway, are hereby adjudged to be prior, "superior and paramount in lien to the said lien of the "mortgages or deeds of trust and the bonds secured "thereby."

The road was directed to be sold for not less than $500,000, all of which was to be paid in cash.

A reference was ordered to ascertain what construction claims were entitled to be allowed under the sixth clause of the decree.

Porter excepted to the portions of the decree giving such claims priority over the mortgage bonds.

On this vital portion of the decree the District judge dissented from the judgment of the Circuit judge, and held that the mortgage lien was superior to these debts incurred for construction. His opinion was filed and is printed in full in the Record, p. 134.

The railway was sold on March 27, 1886, to Porter, for $501,000 cash.

The sale was confirmed on April 5, 1886, Record p. 149.

On August 31, 1886, the master reported among others in favor of,

Pitts. Bess. Steel Co., Limited, for	$12,944.20
Cleveland Rolling Co., for	29,643,97
Smith Bridge Co., for	20,900.24
Crerar Adams & Co., for	7,809.94

as prior claims under the 6th clause of the decree. (Rec., 170-181.)

The master filed also a special report allowing the Irwin claim for the amount of the decree of the Warren Circuit court of $11,450.30 and interest thereon, less the sum paid by New for redemption. (Rec., 185.)

The master also filed a supplemental report, covering the claim of the Smith Bridge Company. (Rec., 187.)

Porter, as complainant and bondholder, filed exceptions to each one of these five allowances. (Rec., 181-191.)

On October 9, 1886, these exceptions were overruled, and the court rendered a final decree, finding that appellees had "*each done work or furnished materials which* "*have been used in the construction and betterment of the* "railway," and were paramount to the mortgage lien and the bonds secured thereby.

The court finds that the net proceeds of sale in the registry are $325,194.27, and orders the payment to each of the appellees of the sum allowed by the master, together with interest after October 27, 1884.

The awards made to these five creditors were the only ones within the appellate jurisdiction of the Supreme court, and therefore the remaining allowances and exceptions were reserved for future consideration to abide the result of these appeals.

An appeal was prayed by Porter from each one of these five final decrees and it was stipulated in open court as a part of the decree that the several appeals should be submitted at the present term of this court, under the 20th rule. (Rec., 192–194.)

The appeals were allowed and perfected by the filing of approved appeal bonds.

ASSIGNMENT OF ERRORS.

The Circuit court erred:

1. In decreeing on February 16, 1866, that claims for construction or operation of the railway, were prior, superior and paramount to the lien of the two mortgages to New, and the bonds secured thereby, which the court in the said decree, adjudged were "outstanding for value."

2. In decreeing on October 9, 1886, that the claims of the five appellees and every of them, against the railway company for construction of its road, were prior, superior and paramount to the lien of the mortgages to New and the bonds secured thereby.

3. In overruling the exceptions filed by the appellant to said five claims and every of them.

4. In decreeing that the appellees or any of them were entitled in equity to any portion of the $325,194.27 being the net proceeds of sale in the registry of the court in preference to the prior liens and equities of the appellant as bondholder.

5. In overruling the special exceptions to the allowances to Irwin, and in refusing to decree that the trustee New had fully perfected a redemption in favor of the bondholder from all the liens of said Irwin.

6. In decreeing that any of said appellees had any lien or claim upon that portion of the railroad south of Attica, or the proceeds of the sale thereof.

BRIEF FOR APPELLANT.

The controversy on these appeals is over a court fund arising from the sale of the Chicago and Great Southern railway, under a decree of foreclosure.

Porter, the appellant, claims that he is entitled to the whole net proceeds of sale because of his ownership of all the bonds and coupons issued by the corporation and secured by a general mortgage on the railway. The Circuit court, over the dissent of the District judge, rejected this claim of priority, and rendered a decree postponing the lien of the mortgage bonds and ordered full payment of the claims of general creditors holding debts for construction. A large number of similar claims are held in abeyance by the lower court to abide the result of these appeals.

1. The facts upon which Porter has a prior lien on the fund in court to the exclusion of construction debts were clearly proven and are distinctly recited and adjudged in the order of sale of February 16, 1886. (Rec., 129.)

On November 1, 1881, the railway company executed a mortgage to John C. New, trustee, covering all its railway made and to be made, appurtenances and franchises, to secure a proposed issue of two million dollars of bonds.

This mortgage was duly recorded in each of the counties in which the road was located in the month of its date.

About December 1, 1881, according to Foster, the then president, the corporate officers, for the sole purpose of raising means to construct the road, issued and negotiated in good faith and for value $1,000,000 of these bonds.

In March, 1883, a consolidation was effected with the Chicago and Block Coal Railway Company.

The articles of merger, filed in the office of the Secretary of State at Indianapolis, on April 7, 1883, expressly recited as one of the trusts of the consolidation that the mortgage of November 1, 1881, "shall constitute the first "lien upon all and singular the railroad of said consoli-"dated corporation."

A supplemental deed of trust was executed by the consolidated corporation on April 9, 1883, to secure the bonds of November 1, 1881, and this second mortgage was also recorded in all the counties.

In February, 1884, an additional $200,000 of bonds were issued.

Porter subsequently became the owner of all the issued bonds and coupons and for default in the payment of interest, brought this action to foreclose the two mortgages.

The decree itself adjudged all these facts to be true and finds that there is $291,800 of interest due to Porter on the bonds "issued and outstanding for value," and that the mortgages are "valid and binding obligations as "against said railway company and are a superior and "paramount lien upon all the railway property, etc., "therein mentioned, excepting as hereinafter provided."

The legal principles by which Porter's rights and priorities are to be ascertained are very clear.

The mortgages being mere incidents to the debts thereby secured, no defense can be made to a foreclosure action, which would be ineffectual in a direct suit at law upon the negotiable securities themselves.

Carpenter v. Longan, 16 Wall., 271.

Under the recording acts the lien of the mortgage became unalterably fixed upon the railway by the record thereof in November, 1881, and unless a contesting creditor can establish some valid, specific and recorded lien of an older date, the bondholders' rights under the recorded mortgages are paramount and must be respected accordingly.

Wabash Ry. Co. v. Ham, 114 U. S., 597.
Dunham v. *Railway Co.*, 1 Wall., 267.

Porter did not become the owner of the bonds for nearly three years after they had been originally issued. Nearly eighty miles of completed railway stood as abundant proof that the securities were issued for value received by the corporation.

Under the well settled rules governing the transfer of negotiable securities, Porter must be considered as a holder in good faith.

"The mere possession of negotiable bonds is *prima* "*facie* evidence that the holder is the proper owner and "lawful possessor of the same, and nothing short of fraud, "not even gross negligence if unattended with *mala fides*, "is sufficient to overcome the effect of that evidence or to "invalidate the title of the holder, supported by that pre-"sumption."

Goodman v. *Simonds*, 20 Howe, 343.
Murray v. *Lardner*, 2 Wall., 110.

Apart from the presumption of good faith, Porter clearly brought himself by direct and uncontradicted evidence within the protection of the additional doctrine of the law merchant. "Even if there is fraud or illegality "in the inception of the securities, the holder protects "himself when he shows that he paid value."

Collins v. *Gilbert*, 94 U. S., 753.

The evidence shows beyond any controversy that Porter paid nearly $400,000 in cash for these securities.

His absolute liability to pay for the bonds accrued in August, 1884.

The letter making the remittance January 12, 1885, is in evidence, and there is no denial of the payment. (Rec., 921.)

Porter not only parted with value, but did so in entire good faith and without any notice of any fraud, illegality or want of consideration. He was introduced as a witness by the general creditors and on cross-examination, stated in this connection:

"Q. So that at the time you entered into that contract "with Drexel, Morgan & Co. you went in in good faith "investing your money in what you believed to be genu-"ine *bona fide* and valid securities?

"A. I went in in perfect good faith and under the busi-"ness assumption that Drexel, Morgan & Co. were "business men who knew what they did and made their "examinations, and any titles they would take it would "be safe for me to take without further investigation.

"Q. And that is the reason you made no special "investigation, is it?

"A. I should not think of investigation coming "through that concern.

"Q. You took it for granted that these securities "coming through their hands in that way, they having "loaned $350,000 to $400,000 on them, you took it for "granted the title in the bonds was good?

"A. I did." (Rec., 493.)

This statement is fully corroborated by the testimony of Nickerson and Gage, who we recognizant of the whole transaction. (Rec., 412, 434.)

The testimony is overwhelming that the creditors were from the very beginning fully cognizant of the existence of the mortgage and the issue and negotiation of bonds under it, and that the funds being used in construction, and paid to them, were in part derived from the hypothecation of these identical bonds, and yet during these three years, with full knowledge of this use of the mortgage bonds, no claim was ever made that they were illegal or tainted in any way.

The first intimation that an attack was to be made upon the mortgage and bonds, was not heard until some time after Porter had bought the bonds and fully paid his money.

Shumway's Evidence Record, page 470.
Starin's " " " 586.
Crawford's " " " 663.

The appellant having abundantly proven that he bought in good faith and for value and without any notice of infirmity in the securities, consequently "has "a title good against the world and can enforce them "against the maker for the full amount thereof, wholly "irrespective of the price at which he bought."

Cromwell v. *Sac Co.*, 96 U. S., 58.

As against any claim that may be advanced that it was the duty of Porter under the circumstances under which he bought the bonds to suspect securities which had been issued and used for three years without challenge from any quarter and to make industrious examination of construction contracts and corporate records, it is sufficient response to state that the law of negotiable paper recognizes no such absurd obligation.

"It is the well settled law that even suspicion as to the "title or the knowledge of such circumstances as would "have put a reasonable man upon inquiry are not suffi- "cient to constitute a defense. The holder must be per- "sonally chargeable with fraud."

Collins v. *Gilbert*, 94 U. S., 753.
Cromwell v. *Sac Co.*, 96 U. S., 58.
Railroad v. *Sprague*, 106 U. S., 760.

There is nothing in the transaction itself or its surroundings to awaken the slightest suspicion as to the bonds. Under section 3,019 of the Indiana statutes, the corporation had the amplest power to sell or dispose of its mortgage bonds at such prices and terms as it saw fit.

Two-thirds of its chartered line was built and Porter received the bonds direct from the hands of bankers who had on the pledge thereof advanced a large sum of money for its construction. The status of Porter is therefore proven to be that of a *bona fide* holder for value of bonds issued under a mortgage recorded on November 19, 1881, and "outstanding for value," as adjudged in the decree. His liens and rights are effective on the railway property as of that date.

2. The Circuit court found in its decree that "the ap- "pellees had each done work or furnished materials "which have been used in the construction or betterment "of the railway." The claims of the Pittsburgh Bessemer Company and the Cleveland Rolling Mill Company are for rails which went into the original construction of the road. The allowance to Irwin was for grading when the line was being built; to the Smith Bridge Company for a bridge superstructure across Wabash river and Pine creek; the indebtedness to Crerar, Adams & Co. was for construction supplies.

When the mortgage to New was executed and recorded the statute law of Indiana did not authorize any lien to be created for work done or material furnished in construction of a railway except for grading and making or repairing bridges, so that the Cleveland Rolling Mill, the Pittsburgh Bessemer Company and Crerar, Adams & Company could not by any method or notice have created or enforced any lien under the statute laws of Indiana.

The only one of the appellees who attempted to avail himself of a mechanic's lien under the local statute was Irwin. That feature of the case will be dealt with later on.

The decree of sale does not attempt to enforce any statutory or contract lien, but upon some quite indefinite theory, declared that the mere construction debts of these creditors are "prior, superior and paramount in lien to the "lien of the mortgages, etc." (Rec., 131.)

Similar words are employed in the final decree making the money allowance to these creditors. (Rec., 193.)

There can be no implied lien in equity on the tangible property of a railway as against a prior recorded mortgage.

Cincinnati v. *Morgan*, 3 Wall., 275.
Davis v. *Alvord*, 94 U. S., 545.

It is elementary doctrine that in order to constitute an equitable lien on property or a fund, there must be some distinct appropriation of the fund by the debtor.

It is not enough that the fund may have been created through the efforts or outlay of the party claiming the lien.

Wright v. *Ellison*, 1 Wall., 16.
Dillon v. *Barnard*, 21 Wall., 440.

That a creditor has no prevailing equity against a prior recorded mortgage simply because he has furnished material or labor which constituted a portion of or improved the mortgage security, has been so often decided by this court that the doctrine is no longer subject to debate.

Dunham v. *Railway*, 11 Wall., 267.
Galveston R. R. v. *Cowdrey*, 11 Wall, 459.
U. S. v. *Railway*, 12 Wall., 364.
Buncombs Co. v. *Tuomey*, 115 U. S., 122.
Wright v. *Kentucky Ry.*, 117 U. S., 72.

The fact therefore that the appellees' claims were for labor or material "used in the construction or betterment "of the railway" constituted, according to the precedents, no justification whatever for a decree giving them preference over an elder recorded mortgage.

3. Certain of the creditors filed an answer and cross-bill, wherein the mortgage and bonds were alleged to have been issued fraudulently and without any consideration, and that Porter and the holders prior to him took the bonds with full notice of such fraud. (Rec., 42–52.)

A reference was ordered "as to so much of said case "as involves the validity of the mortgage and mortgage "debts." (Rec., 20.). The testimony presented on that reference is in the transcript.

It is important to note that the material and labor for which the court allowed a priority was all furnished and performed after the record of the mortgage on November 19, 1881, and the issue of the first million of bonds about December 1, 1881.

The answer of the Cleveland Rolling Mill Company, and others, expressly alleges that the material was furnished by the creditors *after the bonds were issued.* (Rec., 44.)

The rails were shipped by Pittsburg Bessemer Company in January, 1882, and some time afterwards went into the track. (Rec., 766.)

None of the Crerar, Adams & Co. material was delivered until after January, 1883. (Rec., 91.)

The contract with the Smith Bridge Company for the Wabash bridge work was on October 26, 1882, and the work was done mainly in 1883, and the Pine Creek bridge contract was dated October 26, 1882. (Rec., 87.)

Irvin says all his work done prior to March, 1882, had been fully paid for. (Rec., 536.)

When the rails, grading work, bridge superstructure and construction material were placed in the railway and became incorporated therein as a component part of the structure, the mortgage had been already recorded and one million dollars of bonds had been issued and pledged for the moneys up to that date advanced for construction.

The attempt is now made to assail the validity of corporate transactions which took place before these claimants became creditors.

Having, with full notice of a recorded mortgage, voluntarily furnished material which they knew was to be used as an inherent portion of the railway, the principles announced in *Dunham* v. *Railway Co.*, *Galveston R. R.* v. *Cowdrey*, and similar cases, are decisive.

It certainly is not the duty of a court of equity to relieve creditors from the necessary consequence of their own engagements, made deliberately and with full knowledge.

Several of these creditors now claiming a priority furnished their material even after the consolidation in 1883, when its very charter papers on file notified every one who dealt with it that the mortgage of 1881 constituted the first lien on the entire railroad.

In dealing with a controversy somewhat similar, this court decided:

> " The plaintiff made his contract with knowledge of " the existing mortgage and of the declaration which it " contained that it is to be the first and only lien on the " property and franchises of the company, and that it " covered not only property then held by the company " but would also cover all property which might thereafter " be acquired.
>
> " If he had reason to doubt the future solvency of the " corporation or that it would apply the funds it obtained " from its bonds to the payment of his work, he should " have provided for such a contingency in advance."

Dillon v. *Barnard*, 21 Wall., 440.

The decisions of this court have also firmly established the doctrine that corporate acts cannot be challenged for fraud or want of consideration by those who became creditors after the transactions of which they complain had occurred.

To entitle a creditor to relief against acts alleged to be fraudulent, it is absolutely necessary that he shall aver and prove that he was a creditor when the acts were committed.

Hawes v. *Oakland*, 104 U. S., 450.
Herbach v. *Hill*, 112, U. S. 148.

This subject received the most thorough discussion by this court in the case of *Graham* v. *Railroad Co.*, 102 U. S. 148.

It was there declared:

" It is a principle of the common law that a fraud
" could only be avoided by him who had a prior interest
" in the estate affected by the fraud, and not by him who
" subsequently to the fraud, acquired an interest in the
" estate (*Upton* v. *Basset*, Cro. Eliz., 445.)"

" It is a well settled rule of law that if an individual
" being solvent at the time, without any actual intent to
" defraud creditors, disposed of property for an inadequate
" consideration, or even makes a voluntary conveyance of
" it, subsequent creditors cannot question the transaction.
" They are not injured. *They gave credit to the debtor in*
" *the status which he had after the voluntary conveyance*
" *was made.*"

When the effort was made to distinguish corporate from individual acts, the court refused to create the exception, saying:

" We see no reason why the disposal by a corporation
" of any of its property, should be questioned by subse-
" quent creditors of the corporation any more than a like
" disposal by an individual should be. The same princi-
" ples of law apply to each."

Upon the authority of these explicit decisions none of the appellees have any legal status to impeach or postpone the mortgage or the original issue of the bonds in December, 1881, because their debts were not then in existence.

4. The creditors' pleading counting on fraud and want of consideration should have been disregarded, as the proof abundantly shows the material allegations were false. The averments proven to be untrue are these:

(*1*) " *Prior to March 18, 1882, no work had been* " *done upon said line by said railway company of any value.*"

Foster, who was then president, swears that the track was laid from Oxford to Goodland, and a little distance north, and considerable grading work done between Oxford and Attica and Goodland and Fair Oaks. (Rec., 318.)

This declaration is supported by Annabal, Little and Starin. (Rec., 302, 376, 575.)

Foster also swore that up to that date Crawford had furnished all the funds for construction after June, 1881, and that the advances were between $300,000 and $400,000. (Rec., 314, 318.)

Crawford says that up to the delivery of the bonds to him in December, 1881, he had already spent considerably over $300,000, and had become obligated for much more than $400,000. (Rec., 640.)

(2.) " *That the line of railroad constructed from Attica southward was of little or no value, and the said* " *Crawford had or could obtain the control thereof for a* " *mere nominal consideration.*"

The evidence of Crawford shows that he made a contract for the purchase of the Block Coal road at $200,000 before he had any connection with the road north of Attica. (Rec., 637, 641.)

The Drexel-Morgan contract shows by recital that the purchase of the Block Coal road was on April 27, 1881, nearly two months before the purchase of the stock from Foster. (Rec., 903.)

Crawford testifies that prior to December, 1881, this contract for the purchase of the road south of Attica had been already transferred to the Great Southern Company. (Rec., 675.)

The written memorandum made by Foster when he delivered the bonds to Crawford, about December 1, 1881, designates as the first application of the securities;

"In payment of the Block Coal road, purchased by "said Crawford, and the contract assigned by him to the "Chicago and Great Southern Railway, with which it is "to be consolidated, as provided by law." (Rec., 864.)

(3.) *That the road was built in an inferior manner, and not in accordance with contract specifications.*

No attempt was made to substantiate this charge by any witness. The evidence of Crawford is explicit to the contrary and is corroborated by Irvin and Kimball.

Nothing but steel rails were laid in the track after March 18, 1882, and everything was done in a first-class manner. (Rec., 658.)

(4.) *That after the consolidation and abandonment of work, Crawford presented a false report to the board.*

The letter is found at length in the record, page 895.

Not a single witness was produced who ventured to contradict any of its statements.

Crawford declares "it was absolutely true in every particular" (Rec., 657), and his evidence stands altogether uncontradicted in that respect.

(5.) *If a full, truthful and complete report had been made, showing actual payments, it would have appeared "that the entire line did not fairly cost more than $300,000, and Crawford had not expended of his own means to exceed $150,000."* (Rec., 57, fol. 146.)

Peters, the chief engineer, said that all payments during construction were evidenced by vouchers taken for the exact amount. (Rec., 622.)

Starin, who made a large portion of the disbursements, makes the same declaration (page 572) and that the vouchers, if produced, will show "the accurate and honest expenditure" made on the work. (Rec., 600.)

Crawford produced the original vouchers and pay rolls, when he was under examination, showing that he had paid out in cash on the railway $1,011,904.60, and deducting $50,000 for what was contributed from the township taxes, leaves his own personal payments over $960,000 exclusive of interest. (Rec., 679.)

Although these vouchers were tendered for full investigation (Rec., 683) the record will be searched in vain for any evidence which changes a dollar of the actual expenditure as verified by the receipts.

An estimate of Baird, a former engineer, offered by the creditors, fixes the cost of construction of the road north of Attica, that is, exclusive of the Block Coal road, at $490,-658, without including right of way, legal, superintending or engineering expenses, sidings, depots, tanks, stock-pens, or ballasting. (Rec., 739, 731.)

He states his figures are nothing but approximations and that the vouchers taken would be the best evidence of cost. (Rec. 729.)

Without including anything for right of way, legal or engineering expense or fencing, Kimball names $876,317, "as a very low estimate of what that amount of property "could be placed there for." (Rec., 609.)

(6.) *That in a false report at such directors' meeting of February, 1884, Crawford "caused to be issued and "delivered to him all of said bonds now in suit;" which issuance was illegal and void.*

Foster says the first $1,000,000 were signed and delivered to Crawford about twenty or thirty days after

November 11, 1881, to provide money to pay for the Coal Road purchase and for the latter's security for advances. (Rec., 317.)

Crawford states the same thing. (Rec., 642.)

On January 27, 1882, they were pledged to Dull for the balance of the Coal Road liability.

Crawford's Ev., Rec., 642.
Jewett's Ev., Rec., 549.

These bonds so remained in pledge to Dull until in January, 1883, when they were delivered by him direct to Drexel, Morgan & Co., who paid the balance due on his debt. All this is shown by the banker's contract (Rec., 903), and the evidence of Crawford and Jewett.

Drexel, Morgan & Co. held possession of the bonds under their hypothecation continuously from January, 1883, until they were sold to Porter on August 20, 1884, and then expressed direct to him on January 15, 1885.

Prior to any pretense of control by Crawford over the board, as correctly stated by Starin, "all the securities of " the company were hypothecated for the purchase of the " Block Coal road. I never had any corporate assets in " my hands which I paid to Crawford under his construc- " tion contract or otherwise." (Rec., 581.)

(7.) *That the bonds were pledged to the New York bankers "for an individual loan made to said Crawford."*

The evident purpose of this allegation is to charge that Crawford personally received and used the money, and that the transaction was a part of the fraudulent schemes.

The contract itself and the evidence of Starin, Peters and Crawford show that the latter did not receive any of this money, but that it was all spent in building the railway, with an agent of the bankers supervising the whole expenditure. (Rec., 903, 583, 621, 644.)

(8.) *That Drexel, Morgan & Co. took the bonds in pledge, having investigated the construction contract, and knew all about its fraudulent character, and took an assignment thereof as collateral security for the money.*

Not the slightest attempt was made to substantiate any of these charges.

There is no evidence whatever showing that the bankers ever saw the construction agreement, or were cognizant of any fact casting any taint on it.

Their written agreement (Rec., 903) shows that it was not mentioned, still less assigned as collateral security.

It is proven that they made the agreement and advanced the money under the advice of eminent and honorable counsel that their advances were, as the contract called for, " a first encumbrance " on the property.

Opinion of John C. Bullitt, Rec., 934.
Opinion of A. W. Hendricks, Rec., 933.

(9.) *The guilty knowledge was also distinctly made as to Porter.*

Porter, when interrogated by the creditors, stated that he had not seen the construction contract at all (Rec., 462), but conditionally bound himself in June, and bought the bond in August, and made the December agreement without ever having heard a single question raised about the validity or priority of the bonds, but relying wholly on the presumption that the New York bankers had not been expending nearly $400,000, except on valid bonds having a first lien on the property. (Rec., 493.)

These are the substantial averments of the pleadings. As the falsity of each one of them is most clearly established by the evidence, it was the duty of the lower court to have found the issue of fraud and want of consideration in favor of the bond creditor.

5. It is to be noted that the second decree of sale, entered February 16, 1886, by the circuit judge, is most remarkable. It is utterly inconsistent with itself, and is not based on any pleading or allegation whatever.

When the first order of sale was vacated it was decreed that both parties should take evidence "as to so much of
" said case as involves the validity of the mortgage and
" the mortgage debts, as the same are described in the
" bill of said Porter and the defendant's answers."

The answers of the stockholders, Swan and Atkinson, were identical with those pleadings of the creditors which have been just discussed.

On the hearing the court decreed absolutely against the stockholders who tendered the identical issue of want of consideration and fraud.

It expressly adjudged that the bonds held by Porter were "outstanding for value," and that the mortgages securing them were "valid and binding obligations as " against said railway company." (Rec., 131.)

Now, the only defense pleaded by the creditors was that the bonds and mortgages were without consideration, fraudulent and void.

This issue, also tendered by the intervening stockholders, was conclusively disproven. The court thereupon dismissed the shareholders' petition and made the explicit finding that the bonds were issued on value and the mortgages were valid.

This decree therefore conclusively settles that issue. It establishes that when the mortgage was executed and

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This issue, also tendered by the intervening stockholders, was conclusively disproven. The court thereupon dismissed the shareholders' petition and made the explicit finding that the bonds were issued on value and the mortgages were valid.

This decree therefore conclusively settles that issue. It establishes that when the mortgage was executed and recorded and the bonds first issued in 1881, they were then valid and enforcible against the company. It therefore necessarily became "a superior and paramount "lien" on the existing and thereafter constructed railway after its record, as against any creditors whatsoever.

Being a decreed valid lien on the property as against the mortgagor in 1881, it is utterly inconsistent with any known legal principle to order that a subsisting lien of that date can be displaced and postponed in favor of debts created in 1882, 1883 and 1884.

The court below in effect repealed the recording acts.

The recitals of the decree and the results produced by it are utterly inconsistent and indefensible.

It sustains a corporate debt and lien as valid against stockholders who were such at the date of the transaction and then postpones and annuls it in behalf of creditors who gave credit to the corporation long afterwards, and with not only constructive but actual notice of a previously recorded lien and the issue of securities thereunder.

If the bonds were "outstanding for value," and "the "mortgages were valid and binding obligations as against "the railway company," it must have been when they were originally executed and delivered by the corporation.

It is as clear as any legal proposition can be that debts created subsequently cannot alter that subsisting condition of validity and seniority.

It was therefore an unlawful invasion of vested contract rights for the court to postpone the lien of the mortgage which it had adjudged was valid and based upon adequate consideration.

The interlocutory declaration of principle in the sixth clause of the decree of sale and the enforcement thereof in the final allowances which abrogated the mortgage lien in favor of construction debts, were contrary to the issues and the facts previously adjudged and are plainly erroneous.

6. An industrious effort was made in the court below and will doubtless be repeated here, to escape the application of these well recognized rules and to taint these securities by connecting them with a construction contract alleged to be fraudulent.

To this claim there are several most conclusive answers:

First. In dismissing the stockholders' petition, which relied on this precise defense, the Circuit court necessarily passed on that issue and it became *res judicata* when the bonds and mortgage were adjudged valid.

It is perfectly evident that the sixth clause of the sale order and the final allowances did not proceed and cannot be defended on the theory that the creditors sustained their contention as to the construction contract. If it was to be held fraudulent as to creditors, it was necessarily fraudulent and non-enforcible against existing stockholders; as to the latter, the court found distinctly to the contrary.

The proof, beyond all cavil, conclusively disproved every material allegation of the creditors' pleading, and there cannot be found in the decree a single recital showing that the Circuit Court, even by implication, based its rulings upon the theory that the averments of that answer were true.

Its conclusions that the bonds were outstanding for value and that the mortgages were valid and binding obligations against the company, obviously overthrow the doctrine of fraud and want of consideration.

Second. As Crawford was not a director or officer of the corporation at the time the construction contract was made, it would be far in advance of any declared doctrine to hold that the agreement was constructively fraudulent *per se.*

Although there was no lack of allegation that the transactions with the contractor were actually fraudulent and the bonds issued when nothing was in fact due, the proofs made out no such case.

Even if the construction contract should be deemed fraudulent in law, the decree postponing the bonds, and thus practically annulling the mortgage, would be erroneous, even if the bonds were still in the contractor's hands.

A director can lend money to a corporation of which he is an officer, and take security for his advances and enforce the same, exactly as a stranger. Such a contract is not void. The general doctrine applicable to such relation is fully stated in *Twin Lick Oil Co.* v. *Marbury*, 91 U. S., 587.

In the decree in this cause, the bonds and mortgage are as effectually abrogated as if the decree had declared in express terms that they had been issued without consideration and under a contract which was fraudulent.

A similar attempt was made in *Thomas* v. *Railroad Co.*, 109 U. S., 543, to entirely destroy a security because directors were interested in a construction contract. The Circuit court then, as in this case, refused to enforce the mortgage to any amount whatever.

On appeal, such a decree was declared to be manifestly unjust and erroneous.

"The bonds and mortgage in the hands of the trustee "were issued in payment for this work. To the extent "of $205,947.66 the consideration is good, and no sound "principle is seen on which they cannot to that extent "be enforced. To this extent they do not rest on the "original contract, but on work, labor and material actually "furnished to the company and received by it."

"This mortgage given for the construction of the "road, though excessive, by reason of the fraud in the "contract, should stand for the reasonable value of what "the company actually received in the way of construc-"tion. To permit these intervenors to defeat the mort-"gage on any other terms, would be unjust, and "would make the court the instrument of this injustice."

It is clearly proven that Crawford constructed nearly eighty miles of railroad and actually expended over $950,000 in cash of his own personal means and what he borrowed of Drexel, Morgan & Co.

Even if the contractor had sued on bonds issued under a contract constructively fraudulent and voidable, it was the clear duty of the court, under the authority of this case, to enforce the security to the extent of the money actually laid out, and give it the priority over subsequent debts to which it was entitled by the recording acts.

Third. Although it should be assumed that the bonds were subject to attack in the hands of the original contractor, the essential allegation that Porter knew of the contract and its fraudulent character is not supported by any evidence whatever.

It is expressly denied and disproven by the testimony of Porter himself, who is corroborated by Gage, Nickerson and Crawford.

Fourth. The general creditors have constantly assumed that the bonds were all originally issued under the construction contract, and if the latter was adjudged fraudulent or inoperative, that the bonds would necessarily fall with it.

This is not the case. The evidence clearly shows that the first million dollars of bonds was issued by the corporate officers, regularly, lawfully and on adequate consideration over three and a half months before the construction contract, and when Crawford was not a director and had no control whatever over the board.

Crawford would have an unquestionable legal right to the bonds, and mortgage security to the extent of $950,000 and interest advanced by him, even if there had never been a construction contract.

Foster swears that he as president with full authority under the resolves of the board, about December 1, 1881, delivered $1,000,000 first mortgage bonds to Crawford to be used to pay the balance due on the purchase of the coal road and as security for Crawford's advances then about $400,000, and what he should afterwards advance for construction.

This pledge of the bonds is further testified to by Swan, Irvin, Little and Crawford.

The original memorandum in the handwriting of Foster, stating expressly the purposes for which the bonds were delivered to Crawford is in evidence. (Rec., 864.)

This disposition of the bonds was valid and expressly authorized by section 3,019 of the Indiana Revised Statutes, which authorizes every railroad company to issue its bonds and secure the repayment of the same by mortgaging its road, income and other property; and further provides that "it may by its president or other "officers or agents, sell, dispose of or negotiate such "bonds, notes or stock of such company at such times "and in such places, either within or without this state, "and at such rates and at such prices as in the opinion of "the company will best advance its interests."

If, therefore, the construction contract of March, 1882, had never existed or should be declared constructively fraudulent by reason of Crawford's control over the corporation as the chief stockholder, the decree of the Circuit court should be reversed, because the mortgage bonds were not actually delivered under the contract, but had, prior to that time, been lawfully pledged by the corporation in December, 1881, to secure Crawford for all advances made, or to be made for the construction of the road.

The proof shows clearly that at the date of the pledge to Crawford and up to the execution of the construction contract in March, 1882, he had actually advanced in cash of his own means, about $400,000, and was then personally liable upon the balance due upon the purchase of the coal road about $120,000 more.

Foster, as president, pledged the bonds, first for the latter liability, and then to secure Crawford.

This pledge was executed by the pledge of the bonds with Dull in January, 1882.

Crawford, therefore, prior to any construction contract whatever, held a valid second lien upon the bonds to the extent of $400,000.

If the contract of March, 1882, should be obliterated, and Crawford's large expenditures subsequently made should be ignored, there is no known legal principle on which the bonds, even in his hands, could not be enforced to the extent of his actual advances prior to March, 1882, and it would necessarily follow that the priority of the mortgage securing the bonds would have to be decreed to the like extent as against any creditors, whether then existing or subsequent.

As the entire net proceeds of sale in the registry of the court arising from the mortgaged property are only $325,194.27, and Crawford's actual advances in cash under the pledge of the bonds by Foster were $400,000, before there was any construction contract, it was clearly erroneous for the Circuit court to decree to appellees, whose floating debts accrued after the original pledge of the bonds to Crawford, a prior right upon a fund in court which was not sufficient to pay the money actually advanced by the latter when the bonds were hypothecated to him.

7. As will be gathered from the dissenting opinion of the district judge, which is printed in full on page 134 *et seq.*, the decrees now complained of were placed, to some extent, upon the ground that as Crawford owned a majority of the stock of the railway company, a court of equity ought to ignore the corporate existence, and adjudge that a shareholder thus controlling the corporation must be considered as making advances to improve his own property, and therefore cannot by any contract secure himself a lien upon what must be considered his individual property as against any other creditor who has a valid debt against the corporation.

This doctrine is novel, dangerous and not supported in any way either by reason or upon authority.

The Chicago and Great Southern Railway Company was legally created a body corporate under the Indiana law.

Its existence has never been terminated in the only method possible, by a valid judgment of ouster, in a direct proceeding by the state.

When Crawford purchased the majority of the stock in June, 1881, it neither terminated the corporate existence, or to the smallest degree impair the capacity of the corporation to create a debt and give that debt a lawful priority by mortgage.

Nor did the fact that he had become the owner of a majority of the shares of the capital stock of the railway company in any way prohibit Crawford from contracting with the railway company *exactly as a stranger could.*

As an individual shareholder he was under no legal obligation to advance any funds to the company.

If he agreed to do so, it was his absolute legal right to stipulate for terms and priority precisely as though the new moneys had been lent by a non-shareholder.

It is perfectly evident also that even if this extraordinary doctrine was well founded it cannot be invoked to sustain the present decree denying Porter's priority.

It is undeniably true that an owner cannot personally have a debter enforce a lien against his own property; he can execute and record a mortgage upon it to secure his notes, and as soon as a third party advances any money on such securities, they at once become valid, and he can enforce the lien as of its record date against any and all creditors of the owner.

This elementary doctrine was utterly ignored in the decree and allowances.

Its theory was this: In equity the Chicago and Great Southern Railway must be considered as though it was the individual property of Crawford; he cannot enforce a debt or mortgage against his own property; Porter procured the bonds from and through Crawford, and therefore cannot enforce securities which the latter could not.

This result is false in fact and theory. When Dull received the bonds in pledge from Crawford in January, 1881, it was a valid transaction in every respect.

The same is true with regard to the pledge of the bonds with Drexel, Morgan & Co. in 1883. The moneys they advanced for the construction of the road were not advances by Crawford to improve his own property, but fresh funds put into the enterprise by outside third parties upon the faith of a recorded mortgage, and with a distinct contract that their advances should constitute a first lien upon the railway property.

It is obvious that the position of either Dull or Drexel, Morgan & Co. is in no way impaired because Crawford was the owner of a majority of the stock of the railway company.

Their advances were for value, and Porter, who succeeded to their possession and paid the full amount of such advances for the bonds, cannot upon any possible, equitable theory, have his priority to that extent taken away from him. The opinion of Judge Woods so effectually disposes of this theory of the case that any further discussion of it is useless.

8. It is perfectly evident that all the attacks upon the validity or priority of the bonds are afterthoughts.

Chisholm, President of the Cleveland Rolling Mill Company, says no attempt was made to create a mechanics lien. Two years after the rails were delivered the debt was merged into an ordinary judgment at law, and no pretense of lien or priority was made.

McMillan, the attorney, in his interview with Porter made no claim of lien for this demand, but treated it as an ordinary debt. Its own pleading claimed a judgment lien.

The Pittsburgh Bessemer Steel Company, by the letter of their attorneys of April 22, 1884, to Porter, (Rec. 774), make not the slightest claim that such debt has any lien, or equitable priority, whatever.

Their intervention (Rec., 72), not upon the idea that the mortgage bonds are fraudulent, but that the Bessemer Company has a vendor's lien for the rails sold, and Porter had notice.

The latter allegation is disproven by the letter just referred to, which makes no claim of vendor's lien.

This court has announced in a recent case that the doctrine of a vendor's lien does not apply to personal property sold.

Wab. Ry. Co. v. *Hain*, 114 U. S., 597.

The Smith Bridge Company by their pleading (Rec., 24), only claimed to have right and title to the bridge superstructure, which it erected by virtue of a written contract with the railway company.

That contract was made long after the record of the mortgage.

It erected the work on the previously mortgaged right of way and piers long after the pledge to Drexel, Morgan & Co.

The contract under which the bridge was constructed was never recorded. No pretense is made that the banking firm had any actual knowledge thereof. No mechanics lien was ever filed or created for this bridge work.

Under the law, as repeatedly announced by this court, the two bridges became incorporated into the railway previously mortgaged, and a contract lien with the mortgagor cannot be enforced as against a previously recorded lien of which the bridge builder had notice under the registry laws.

Crerar, Adams & Co. make no allegation whatever of a lien of any character. The debt is like any other ordinary liability of the corporation for construction purposes.

Irvin had, under the law of Indiana, a statutory mechanic's lien upon the part of the railroad graded by him. As his work began prior to the record of the morgage, it was superior to the latter. He procured a decree of sale in a state court. He sold the property covered by his lien and decree. It was in exact accordance with the statute and his own decree and certificate of purchase redeemed from such sale by the trustee, New, for the benefit of the appellant as bondholder. Under the act regulating the right and effect of redemption the lien of Irvin became absolutely extinct so far as the mortgage is concerned.

The decree below proceeds on the theory of some equitable lien which of course is utterly inconsistent with the existence of a statutory lien.

The master's suggestion that Irvin also had a lien in Benton county for this debt, that he had brought suit there in season to enforce it, and that the road in that county was of value sufficient to meet the debt, are three matters upon which the record shows there was no proof whatever.

There was no evidence of lien filed or suit brought in Benton county for value.

The statute of Indiana declares that the lien for work done in grading a railroad *is confined to the county where the work is done*.

The decree of the Warren Circuit court in favor of Irvin finds that all his unpaid work was done in Warren county. Under the law, therefore, Irvin could not possibly have a mechanic's lien in Benton county for balance due on the grading in Warren county.

From this decree which merged his sole lien the bond creditor accomplished a valid and complete redemption.

The record is full of evidence not only to the effect that the appellees never made the slightest claim of any equitable and prior lien, but were all personally cognizant of the issue and negotiation of these first mortgage bonds and made no objection thereto, but from time to time with full knowledge, received a portion of the funds that were realized by the corporation from the pledge of the securities.

By the plainest rules of law they are estopped from claiming any rights as against these negotiable instruments.

9. The appellant is entitled to a reversal of these decrees and allowances upon two grounds, which are absolutely unanswerable.

Porter did not receive or purchase these bonds from Crawford, but from Drexel, Morgan & Co. The latter received them in 1883 from Dull, who had received them in pledge directly under authority of Foster, as president, in January, 1882.

Both Dull and Drexel, Morgan & Co were undeniably holders for value and in good faith. Either could have enforced the bonds and the priority of the mortgage as against any of these appellees.

Porter therefore does not in any sense stand in the position of Crawford.

That he has the absolute right to enforce precisely the rights which either Dull or Drexel, Morgan & Co. could have done, is a proposition so well settled by the law of negotiable securities that it would be a waste of time to argue the question or cite the authorities.

Porter, in June, 1884, became the surety of Crawford upon the debt to Drexel, Morgan & Co.

He paid that debt, as obliged to do by his contract.

To the extent of their debt he is subrogated to their lien and equity, and can enforce them precisely as they could.

The entire net proceeds of sale do not amount to this debt and these decrees should be reversed and the proceeds all decreed to belong to appellant.

O. Peckham,
R. B. F. Pierce,
Solicitors.

SUPREME COURT

of the

UNITED STATES

OCTOBER TERM, [illegible]

[illegible], *Appellant*, v. THE [illegible] [illegible] OF THE [illegible] [illegible] COMPANY, [illegible] [illegible] COMPANY, [illegible]	No. [illegible] [illegible] *District Court* [illegible] *of the United States* *for the District of* [illegible] [illegible]

[illegible]

[illegible]

[illegible]

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1886.

HENRY H. PORTER, *Appellant*, *vs.* THE PITTSBURGH BESSEMER STEEL COMPANY (LIMITED); THE CLEVELAND ROLLING MILL COMPANY; THE SMITH BRIDGE COMPANY; CRERAR, ADAMS AND COMPANY, AND VOLNEY Q. IRWIN.	**No. 1280.** *Five several appeals from the Circuit Court of the United States for the District of Indiana.*

REPLY.

BRIEF IN BEHALF OF HENRY H. PORTER, *Appellant*.

I.

REPLY TO BRIEF ON MOTIONS TO DISMISS APPEALS.

Solicitors for these five appellees have served us with notice of motions to dismiss the appeals, accompanied by a printed brief in support of said motions.

The causes assigned in said motions and brief are

First. That the decree of February 16, 1886, as amended by the supplemental decree of March 2, 1886, was a final decree: That appellant Porter by his appeals herein does not complain of, nor seek to review, any errors alleged to have been committed by the Circuit Court in executing and carrying out said final decree of February 16, 1886, as modified: And that the transcript of record in these appeals presents no errors that are recognizable by this Court.

Second. That appellant Porter is estopped from contending that the decree of February 16, 1886, as modified by the supplemental decree of March 2, 1886, was not a final decree, because his title to, and possession of, the property sold rests upon the validity of that decree: And that all alleged errors presented by these appeals, and contained in the transcript of record filed in this Court, have reference solely to errors allege to have been committed by the Circuit Court in entering the decree of February 16, 1886, as modified.

Third. That these appeals are from decrees entered in carrying out and executing the decree of February 16, 1886, as modified, and that appellant, by these appeals, only seeks to have the said decree of February 16, 1886, reviewed by this Court.

Fourth. That appellant Porter has no interest whatever in the purchase-money fund now in the Registry of the Court arising from the sale of the railway and property, and therefore has no right to prosecute these appeals.

1. The grounds upon which these motions are

based are not supported by the facts disclosed by the record or by authority.

The decree of February 16, 1886, may be epitomized thus:

The first paragraph decrees the answer and petition of Swan and Atkinson, as stockholders, to be dismissed, reserving the question of costs against them.

The second, third, fourth and fifth paragraphs decree that the Chicago and Great Southern Railway Company executed the original and supplemental mortgages to New, Trustee, and caused them to be duly recorded; that $1,200,000 of bonds, secured by said mortgages, were issued and delivered to Henry Crawford; that the bonds so issued are now owned and held by Henry H. Porter and associates; that interest to the amount of $291,860 was due and unpaid on these bonds "issued and outstanding for value," and "that said mortgages or deeds of trust are valid and binding obligations as against said railway company, and are a superior and paramount lien upon all the railway property, lands, rights, privileges, immunities and franchises therein mentioned, and described and thereby conveyed, excepting as hereinafter provided."

The sixth and seventh paragraphs decree that "all Court and Receiver's indebtedness" and "all unpaid valid claims against said railway company for right of way, lands, labor, rolling stock and material used in the construction and betterment and operation of said railway are hereby adjudged and decreed to be prior, superior and paramount *in lien* to the said lien of said mortgages or deeds of trust and the bonds secured thereby."

The eight paragraph provides for a sale of the railway and property as an entirety on default of payment *forthwith* by the company of the $291,860 of interest decreed due on the mortgage bonds outstanding; that no bid for less than $500,000 should be received; and that upon confirmation of sale all the purchase money should be paid into the Registry of the Court in cash "unless then otherwise ordered, adjudged and decreed by the Court."

The ninth and last paragraph is as follows:

"It is further ordered, adjudged, and decreed that a reference be made to the Master, William P. Fishback, to take testimony and report his findings as follows:

"1. The amount the Receivers have expended in the construction, improvement or betterment of said railroad, including the debts incurred therefore and not yet paid.

"2. The amount expended by the Receivers in the operation of said railroad, including the debts incurred and not yet paid.

"3. The total amount of earnings received by said Receivers in the operation of said railroad.

"4. The amount of outstanding Receivers's certificates issued under the orders of this Court, and how and for what purpose the proceeds thereof were expended.

"5. The amount due the several claimants under the sixth paragraph of this decree, showing the amount due each claimant and the aggregate amount due upon each of the two classes of claims mentioned in said sixth paragraph, and that said Master report his findings with the testimony taken by him on this reference, on or before the day of the confirmation of the sale made hereunder." (Record pp. 129 to 133.)

Appellant Porter excepted to parts of this decree. (Record p. 133.)

The Court will observe that this decree *makes no provision whatever for the distribution of the proceeds of sale. It makes no provision for payment of costs of suit. It does not find or decree that there are any claimants holding claims entitled to priority in lien over the mortgage bonds. It ascertains no claimants. It decrees no amounts due claimants.* It distinctly decrees that the claimants are *unknown* and the amounts due them are *undetermined*, and therefore makes a reference to the Master to find out who the claimants are, and what amounts are due them, directing the Master to take testimony and report to the Court.

The plain and evident purpose of this decree was simply to sell the railway for cash, thereby getting it out of Court, and transfer the contention between Porter, as bondholder, and the claimants for construction debts from the property to the fund arising from its sale.

Counsel for appellant Porter fearing that if the sale of the railway was made under the decree as originally entered, it might be claimed that the sale was made *subject to the claims for construction when ascertained*, moved the Court to so modify the decree as to make it clearly and definitely express the intention of the Court to transfer the legal contention between the bondholder and holders of construction debts from the property sold to the fund arising from its sale.

While the Circuit Judge did not grant the amendment in the precise form we asked, still on our motion such an amendment was entered on March 2, 1886, as effectually evidenced the intention of the Court to transfer the entire legal contention from the property to the purchase money fund. The important part of that amendment is in these words:

"And it is further ordered, adjudged and decreed that the sale of the property hereinbefore ordered, shall pass to the purchaser, title thereto, free and discharged of all liens and claims, including the two classes of claims mentioned in the sixth paragraph of said decree."

This amendment was omitted by the Clerk in making up the record, but he has certified it up and it is printed with his certificate on pages 31 and 32 of our original brief on these five appeals. The material parts of this amendment are set out in the decree confirming the sale. (Record p. 150.)

Under this amendment it cannot with any reason be claimed that the sale of the railway was made *subject* to any claim of any or either of these appellees, or of any other claimant.

This amendment of March, 2, 1886, effectually disposes of every authority cited for appellees under the second and fourth propositions of their brief in support of these motions to dismiss these appeals.

In every one of those cases either the decree of sale, or the decree confirming the sale, made the sale or confirmation thereof *subject to the payment of certain claims*, which we have just seen is not the case in these appeals here presented.

In *Crawshay* v. *Soutter and Knapp*, 6 Wall. 740, 741, the Court, by Mr. Justice Davis, said:

"Crawshay and Oddie were original bondholders under the land-grant mortgage, *but before filing their exceptions to the report of sale*, they had surrendered their bonds to the Trustees, appointed under the scheme for the adjustment of the affairs of the La Crosse Company; took certificates of stock, and subsequently the bonds and stock of the St. Paul Company, as provided in the agreement for organizing it. By doing this, they elected to abide by the action of the Trustees, and cannot now be heard to interpose in objection to the confirmation of the sale."

As to Vose, the other appellant, the Court said:

"Vose, at the time of filing exceptions to the report of sale, was the owner of five bonds of the La Crosse Company, for which he held the certificates of the Trustees, entitling him to a corresponding amount in bonds and stock of the new company. * * * The order of confirmation was expressly made *subject to the payment* to him by the St. Paul Company, of five bonds of one thousand dollars each, with all accrued and unpaid interest, upon the surrender by him of the certificates of the Trustees and all claims for dividends."

From these quotations it is very manifest that there is no point of similarity between that case and these five appeals.

In *Farmers' Loan and Trust Company* v. *Central Railroad Company of Iowa*, 17 Fed. Rep. 759, the decree confirming the sale expressly made the sale and acceptance of title *subject to the payment of " all claims pending* *in this case, debts and liabilities,*" and declared that such debts and claims "do constitute, and are hereby made, a first and paramount lien upon all said property, money, credit and all additions thereto, to all other liens, and to the title acquired by the purchaser at foreclosure sale, and by the conveyance to the Central Iowa Railroad Company." Hence it is clear that that case can have no application to these appeals.

In *Jerome* v. *McCarter*, 94 U. S. 734, the foreclosure and sale was on a *junior* mortgage, and was of necessity simply a sale of the equity of redemption, and was in all respects *subject* to the prior mortgages. The Court said:

"The full indebtedness—of the two prior mortgages—was acknowledged by making the junior mortgage expressly subject to it, and as there is no evidence that any portion of it has been paid, it is not admissible for the mortgagees or their assignees in bankruptcy to deny it now."

There is no point of similarity between that case and these appeals.

In *Corcoran* v. *Chesapeake and Ohio Canal Company*, 94 U. S. 741, the Court rendered an opinion deciding how the revenues of the canal should be distributed, and the parties to the suit stipulated and agreed, as is shown by the opinion of this Court, "that a decree has been passed by the Circuit Court of Baltimore City making distribution of the net revenues of said Canal Company, and ordering their payment from time to time as the same accrue, in conformity with the said opinion." This Court very correctly held that the parties to that stipulation, by which they accepted the opinion and decree under it as the law of the case, could not afterwards assail that decree of distribution. We think it quite impossible to discover any analogy whatever between that case and these appeals here presented.

In *Wetmore* v. *St. Paul and Pacific Railroad Company*, 3 Fed. Rep. 177, certain bondholders, over a year after sale and confirmation of sale and delivery of deed to the purchaser, sought by petition to be made parties to the suit, in order to file a motion to have the deed, the decree confirming the sale, the sale, and the foreclosure decree, all set aside. The record shows that the Trustees representing these bondholders were parties and consented to the decree confirming the sale, their consent being in these words:

"This order is made by and with the consent, and at the request of the Trustees, the complainants, and with the consent of the parties defendant shown above, and the right to make any further order is reserved."

Mr. Justice Miller, presiding at Circuit, very justly refused to grant the petition.

We fail to perceive any possible bearing that case can have on any point involved in these appeals.

The case of *Chicago, Danville and Vincennes R. R. Co.* v. *Fosdick*, and same v. *Huidekoper*, 106 U. S. 47, has no bearing upon the point in support of which it is cited. We will in another connection refer to this case again.

In *Farmers' Loan and Trust Company* v. *Waterman*, 106 U. S. 265, it was expressly provided by the decree that the sale should be *subject to the back pay claims*. The Court said:

"As the purchasers took the property subject to the lien, if any there was, of the back pay claims, the bondholders, as bondholders, cannot in any manner be affected by the result of the proceedings to determine whether such lien exists, and, if so; to what extent."

It was, therefore, properly held that the Trust Company, as represenative of the bondholders, had no interest in any further decree touching the payment of back pay claims, and could not appeal from such further decree, because it was in no sense a decree against the Trust Company, nor did it affect the interests of the Trust Company.

That case is very different from these appeals. Here the sale of the railway was by the decree of March 2nd made free and discharged of all liens. The bondholders, and all other claimants, had their liens, by the decree of sale, and confirmation of that sale, lifted from the railway and property, and the bondholder in these appeals has full right to contest for such a decree of distribution of proceeds of sale as will apply such proceeds to the payment of his bonds.

This decree of February 16, 1886, as amended by the supplemental decree of March 2, 1886, simply foreclosed the mortgages on the railway, ascertained the amount due on the outstanding bonds, and sold the railway and property for cash, freed and discharged from all liens and claims.

The purchaser at that sale bought subject to no claim whatever of any kind. Porter, in buying the property at that sale, did not buy it *subject* to the claims of these appellees, nor did he, by the purchase, *consent* that the claims of these appellees should be paid in preference to his bonds. He bought for cash, *no decree distributing the proceeds of sale having been rendered.*

The railway was sold, the purchase money was paid into Court, and the deed conveying the railway and property to the purchaser "free and discharged of all liens and claims, including the two classes of claims mentioned in the sixth paragraph of said decree," was executed and delivered before these appellees were found by the Court to be holders of valid claims against the Chicago and Great Southern Railway Company, and before any amounts were found and decreed due them.

The sale was confirmed and the deed delivered April 5, 1886. (Record pp. 149 to 153.)

The reports of the Master on claims of these appellees were filed August 31, 1886, and October 8, 1886. (Record pp. 170 to 185.)

The decree decreeing payment of the claims of these appellees out of the proceeds of sale of the railway and property in preference to the mortgage bonds was rendered October 9, 1886. (Record pp. 192 to 194.)

With these facts and dates in view, it is idle to claim or assert that these claims of appellees are in any sense *liens* upon the railway, or that the property was sold *subject* to them as liens prior to the bonds.

The supplemental decree of March 2, 1886, abrogated the sixth clause of the decree of February 16, 1886, in so far as it undertook to declare a prior lien in favor of *unknown claimants* for *undetermined amounts*, and remitted and transferred the entire legal contention between the bondholder and these claimants from the property to the proceeds of sale.

That such was the full purpose and intention of the Circuit Court is made manifest by other orders entered after the sale and before the decrees were rendered in favor of these appellees.

The decree confirming the sale, entered April 5, 1886, recites that the sale was made free and discharged of all liens. It authorizes the purchaser to turn in the Receivers' certificates in part payment of the purchase price and requires the balance of the purchase money to be paid in cash. *It makes no provision for distribution of proceeds of sale.* It expressly continues the reference to the Master referring all matters to him to find and report the amounts due thereon. (Record pp. 149 to 153.)

On June 4, 1886, an order was entered requiring the Master to begin taking evidence, and to close the taking within the time in said order limited. (Record p. 154.)

The utmost that can be reasonably claimed for the sixth paragraph of the decree of February 16, 1886, is that it was an interlocutory declaration of the intention of the Court ultimately to decree claims for construction, —if any were found to exist,—to be prior and superior in lien to the lien of the mortgages, but, in the absence of any finding that any such claims existed, in the absence of ascertaining and designating any claimants, and finding the amounts due them, and in the absence of any decree providing for the distribution of the proceeds of sale, surely nothing more can be claimed for it than that it was a mere interlocutory declaration without force and of no effect upon the rights of the parties, unless re-declared and finally decreed after the claimants were discovered and the amounts of their claims adjudged.

But the amendment of March 2, 1886, rendered this interlocutory declaration nugatory, removed all liens from the property when sold, and transferred the contention as to rights and priorities from the property to the fund arising from its sale.

The final decree of October 9, 1886,—which is five several decrees in one,—makes this intention and purpose of the Court too clear to admit of controversy.

It expressly states that the *entire cause* was before the Court, and was considered by the Court in rendering this decree. After overruling the exceptions to the reports of the Master, the statement of the decree is "And the Court upon said reports *and all the evidence in this cause* finds," etc.

The first paragraph finds that the claims of these five appellees "are valid claims against said railway company to the amounts hereinafter named, *and which said amounts are adjudged and decreed to be valid claims*—under and in pursuance of the sixth paragraph of the decree heretofore on the 16th day of February, 1886, entered in this cause,—*prior, and superior and paramount to the lien of the mortgages or deeds of trust in said decree mentioned, and the bonds secured thereby.*"

Putting the words, "under and in pursuance of the sixth paragraph of the decree heretofore on the 16th day of February, 1886, entered in this cause," into this decree, added nothing to its force. It is a *present decree* decreeing that these claims ARE adjudged and decreed to be prior, superior and paramount to the mortgage bonds. It gains no force or efficacy by reference to the decree of February 16, 1886, except by referring to it for a description of the mortgages and classes of claims, thereby abreviating the present decree.

The second paragraph finds that there is in the Registry of the Court $325,194.27 derived from the sale of said property after paying Court and Receivers' indebtedness.

The third paragraph finds the several amounts due to these five appeals, after which it proceeds as follows :

"It is therefore finally ordered, adjudged, and decreed by the Court that the Clerk of this Court shall pay out of the said fund in the Registry of the Court to the credit of this cause the said several sums of money, with interest to be computed thereon, to the said parties respectively, or their Solicitors of record, viz:

To the Smith Bridge Company the sum of...	$23,345 54
To the Cleveland Rolling Mill Co. the sum of	33,112 32
To Crerar, Adams & Co. the sum of............	8,723 71
To the Pittsburgh Bessemer Steel Co. the sum of..........	14,458 65
To Volney Q. Irwin the sum of.............	12,789 98."

After the prayer for appeals and fixing supersedeas bond, the decree closes thus:

"And it is further in open Court agreed and stipulated between the said Henry H. Porter, on the one side, and the said Bessemer Steel Company, the Smith Bridge Company, the Cleveland Rolling Mill Company, Crerar, Adams & Company and Volney Q Irwin, on the other, that the several appeals hereinbefore allowed, shall be submitted at the next term of the Supreme Court of the

United States, which commences on October 11, 1886, under the Twentieth Rule of said Supreme Court.

"And as to all the other claims reported upon by the Master, and the exceptions to all such claims, the Court reserves all such matters for future consideration."

(Record pp. 192 to 195.)

No one can read this decree without knowing that the Circuit Court intended it to be the final decree, giving to the claims of these five appellees priority over the mortgage bonds. The Court on rendering this decree heard full argument on the question of priority of claims. All the evidence in the cause was considered and commented upon. It was the first time any definite claimants for any definite amounts were before the Court asking payment in preference to the bonds. It was the first time Porter, as bondholder, was enabled to object to payments being made out of the fund in preference to his bonds. It was the first decree providing for a distribution of the proceeds of sale.

The Court treated the declaration in the decree of February 16, 1886, as merely interlocutory, and upon the entire cause, and all the evidence, proceeded to consider and decree upon the question of priority as between the claim of Porter, as bondholder, and these appellees as holders of valid claims for construction.

2. It is well settled that a decree may be final as to some matters and not final, but merely interlocutory, as to other matters.

Williams et al. v. *Morgan et al.* 111 U. S. 684.

The decree of February 16, 1886, as amended by the decree of March 2, 1886, was final as to the determination of the amount due on the bonds, the foreclosure of the mortgage and the sale of the property for cash, free and discharged of all liens and claims.

It was not a final decree as to anything else. It decreed no distribution or appropriation of the proceeds of sale. It made no provision for costs of suit. It ascertained no valid claims against the fund in opposition to the mortgage bonds. It decreed no amount in favor of any claimant excepting the bondholder. It did not decree that any valid claims against the property or the proceeds of sale existed excepting the mortgage bonds. It did not settle the rights of these appellees. It was not then found, adjudged or decreed that these appellees had any valid claims. It did not find or decree a single fact that could prevent the purchase-money—after payment of Court and Receivers' indebtedness—from going to payment of the mortgage bonds in the usual and legal way. Further litigation between Porter, as bondholder, and the holders of floating debts against the company, and a further and final decree was necessary to deprive Porter of his rights and priorities as the holder of the mortgage bonds held and decreed to be valid and binding obligations of the company, and to be outstanding for value. It especially referred to the Master important questions of litigation in the cause, directing the Master to take testimony and report the testimony and his conclusions thereon, thus necessitating the further hearing by the Court of the cause, preparatory to final decree, as to all matters, excepting the mere foreclosure of the mortgage and sale of the property for cash, freed and discharged of all liens and claims.

Through abundant caution, and to prevent any possible misunderstanding of the purpose and intention of the Court in rendering the decree of February 16, 1886, as modified by the supplemental decree of March 2, 1886, sometime before the sale we asked the Court,—the District Judge presiding,—to fix the amount of a supersedeas bond superseding the parts of the decree excepted to by Porter. The District Judge stated that he did not regard those parts of the decree after the supplemental decree of March 2, 1886, was entered, as final or appealable, but referred us to the Circuit Judge, who had entered the decree, the District Judge dissenting. We then wrote fully to the Circuit Judge at Chicago. He promptly answered saying:

"It is very clear to me that that part of the decree in the case which provides that the claims for labor, materials, etc., shall be paid out of the proceeds of sale before the bonds are paid, is not final in the sense that it can be appealed from."

Just in this connection we desire to call attention to a statement made by solicitors for appellees in their brief on motions to dismiss these appeals. It appears on pages 40 and 41, and is as follows:

"Appellant could then have appealed, and had those questions of the validity of mortgages and mortgage-indebtedness and priorities, reviewed by this Court. That appears to have been the view his counsel took of the matter at that time, when his appeal from that decree was prayed for and allowed. That such appeal was not perfected, it is evident, from the record, was not due to any mistake of counsel, but arose from the business necessities of appellant and his syndicate, for a speedy sale of the railroad property, and its acquisition and possession by them freed from all liens."

In the first place there was and is no question of "the validity of the mortgages and mortgage-indebtedness;" both Judges at once and unhesitatingly held the mortgages to be valid and binding obligations of the company; that the $1,200,000 of bonds were issued and outstanding for value, and that there was due of matured interest the sum of $291,860. But we desire to consider the other sentences of this statement. When analyzed they contain suggestions regarding the action of the Circuit Court which we would be very slow to make, and which we wish to condemn as exceedingly out of place and altogether uncalled for and unsupported. The statement is, in effect, saying: "Porter owned all the bonds. The road was in the hands of a Receiver and daily running in debt. Tying it up in Court for two or three years, by appeal, meant the absolute ruin of the property, and the wiping out of all value in the bonds. The Court knew these facts, and knowing them entered a decree that would either compel Porter to permit two or three hundred thousand dollars of floating, unsecured, construction debts to be paid in preference to his bonds without contest, or compel him to hang up the road in Court for two or three years and thereby load it down with Receiver's debts and wipe out all value of the bonds." The plain suggestion is that the Circuit Court put Mr. Porter in this position, and that we, as his counsel, appreciating the "business necessities of appellant and his syndicate for a speedy sale of the railroad and property," forebore to perfect appeal. Any such action of a Court of Equity would be monstrous. It would be judicial robbery, instead of due administration of law and justice. We are glad that it is in our power to establish conclusively, by the statement of the Circuit Judge above quoted, that no such thought ever entered the mind of the Court. The fact is that after the supplemental decree of March 2, 1886, was entered, all that was said in the decree of February 16, 1886, in regard to *priorities of lien* was substantially abrogated. It would be nonsense to decree that certain classes of claims—if any are found to exist—are a *lien on the property* prior, superior and paramount to the lien of the mortgage bonds, and in the next clause decree that the property be sold "*free and discharged of all liens and claims.*"

The object of the amendment to the decree was to entirely separate the mere foreclosure and sale proceedings from the litigation and contest regarding claims and priorities. In this way the railway was gotten out of Court without delay, and all questions of rights and priorities were reserved for final decree at the close of the litigation, when all the claims and all the facts were before the Court for final adjudication.

That the Circuit Court was right in holding that the decree of February 16, 1886, as amended by the decree of March 2, 1886, was not final and appealable as to the question of rights and priorities between the bondholder and the holders of construction debts is proved by abundant authority.

"When *all* issues are tried and *settled*, *and all refer-*

ences to the Master ended, the cause is again brought to hearing upon the matters of equity reserved; and a final decree is made," which is appealable.

Black. Com., bk. 3, p. 453.

"When a decree finally decides and disposes of the whole merits of the cause, *and reserves no further questions or directions for the the future judgment of the Court;* so that it will not be necessary to bring the cause again before the Court for final decision, it is a final decree."

Daniels Ch. Pleadings and Practice, Sec. 1,199, Note (1).

"Any judgment or decree, leaving some further act to be done by the Court, before the rights of the parties are determined, and not putting an end to the action in which it is entered, is interlocutory."

"In all cases where further proceedings are to be taken, or further orders of the Court are necessary, the judgment can not be treated as final even for the purposes of appeal."

"No order or decree which does not preclude further proceedings in the case in the Court below should be considered final.

"A decree can never be final until the party in whose favor it is can obtain some benefit therefrom without again setting the cause down for further hearing before the Court, upon the equity reserved upon the coming in and confirmation of the report of the Master, to whom reference has been made, to ascertain certain facts which are absolutely necessary to be determined before the case can be finally disposed of by the Court."

"A decree is interlocutory which makes no provision for costs, and in which the right is reserved to the parties to set the cause down for further directions not inconsistent with the decree already made."

"No judgment or decree will be regarded as final within the meaning of the statutes in reference to appeals, unless all the issues of law and of fact necessary to be determined were determined, and the case completely disposed of, so far as the Court had power to dispose of it."

Freeman on Judgments, 3d Ed. Secs. 12, 24, 29, 30, 31, 34.

As has been shown, the only effect of the decree of February 16, 1886, as modified by the supplemental decree of March 2, 1886, was to sell the railway for cash, *and bring the fund into Court subject to the future decrees of the Court rendered in the further progress of the cause.* Solicitors for appellees in their brief seem to rely mainly upon the case of *Forgay* v. *Conrad*, 6 How. 201. That is a leading case, announcing a rule that is now well settled. Solicitors for appellees quoted largely from the case, but omitted to quote that part of the decision which clearly shows that it does not apply at all to this case. After announcing the rule Mr. Chief Justice Taney, at page 204, says:

"This rule, of course, does not extend to cases where money is directed to be paid into Court, the property to be delivered to a Receiver, or property held in trust to be delivered to a new Trustee appointed by the Court, and to cases of a like description. Orders of that kind are frequently and necessarily made in the progress of a cause, but they are interlocutory only, and intended to preserve the subject-matter in dispute from waste or dilapidation, and to keep it within the control of the Court until the rights of the parties concerned can be adjudicated by a final decree."

That is precisely what was done, and all that was done, by the decree of February 16, 1886, as modified by the decree of March 2, 1886. It simply sold the railway which was daily suffering "from waste or dilapidation," and brought the fund arising from its sale into Court to abide the further litigation in the cause, and the final decrees of the Court.

In *Grant* v. *Phœnix Insurance Company*, 106 U. S., 481, 482, Mr. Chief Justice Waite again very definitely distinguishes between the rule announced in *Forgay* v. *Conrad*, *supra*, and cases where the preliminary decree simply prevents waste, expense and dilapidation, by selling the property, but retains the fund in Court for the benefit of whomsoever it shall be found to belong to by the final decree of the Court. We quote from the opinion:

"There is no order, as in *Forgay* v. *Conrad*, 6 How. 201, *Thomson* v. *Dean*, 7 Wall. 342, and other cases of like character, adjudging the property to belong absolutely to the appellee, and ordering immediate delivery of possession. In *Forgay* v. *Conrad*, *supra*, which is a leading case on this question, it was expressly stated by Chief Justice Taney (p. 204) that the rule did not extend to cases where property was directed to be delivered to a Receiver. The reason is that the possession of the Receiver is that of the Court, and he holds, pending the suit, for the benefit of whomsoever it shall in the end be found to concern. Neither the title nor the rights of the parties are changed by his possession. He acts as the representative of the Court in keeping the property so that it may be subjected to any decree that shall finally be rendered against it."

This statement of the case has direct and forcible application to these appeals. Here the Court, instead of retaining the property in its possession by its Receiver, for the purpose of preventing waste and deterioration, simply decreed that the property be sold freed from all liens and claims, and that the purchase money fund should be retained in Court subject to any decree finally rendered by the Court against it. This case also disposes of the case of *Thomson* v. *Dean*, 7 Wall. 342, cited by Solicitors for appellees. In that case the decree directed the immediate surrender of the stock. It changed absolutely and completely the ownership of the stock. It did not simply sell the stock and bring the proceeds of sale into Court to await further litigation between the parties, and further decree of Court.

All that is decided by the case of *Railroad Company* v. *Bradleys*, 7 Wall. 575, is that that part of the decree decreeing foreclosure of mortgage and decreeing sale of the property was final. The contest there was over the right of the Trustees to sell under their power in the trust deed. The Court decreed that they had the right to sell. That was the only part of the decree held final. There was no final decree as to rights and priorities in the fund arising from the sale.

In that case, just as in this, the entire question of distribution, and all rights relative thereto, was reserved for further final decree. In the opinion Mr. Justice Chase quite significantly says:

"We think that the decree entered on the sixth of February, 1869, was a final decree within the principles of the case of *Thomson* v. *Dean*, decided at this term, though it might have been otherwise, had the decree been limited to the dissolution of the injunction, thereby merely permitting the trustees to sell under their trust."

In *Winthrop Iron Company* v. *Meeker*, 109 U. S. 180, cited by Solicitors for appellees, Mr. Chief Justice Waite, after quoting the rule given in *Forgay* v. *Conrad*, *supra*, and the exception to that rule, says:

"Here the rights of the Hematite Company and the defendant directors of the Iron Company have been adjudicated and definitely settled. Their lease, which was in reality the subject-matter of the action, has been cancelled, and a delivery of the leased property to the Iron Company has been ordered. The complainants are entitled to the immediate execution of such a decree."

Could any such language be used in reference to these appeals at bar? The decree of February 16, 1886, as modified by the decree of March 2, 1886, did not decree anything due to these appellees. It did not order or decree that anything should be paid to them. It decreed no delivery of the proceeds of sale to any one. It did not adjudicate or settle the controversy between the bondholder and these appellees. The evidence on that controversy had not all then been taken. It did not even adjudicate costs in the cause. As we have repeatedly stated, all that it did was to sell the railway for cash, freed from liens, and took it out of Court, putting the proceeds of sale in its stead to abide the further litigation of the parties and final decree of the Court.

In *St. Louis Iron Mountain and Southern Railroad Company* v. *Southern Express Company*, 108 U. S. 29, Mr. Chief Justice Waite, in denying motion to dismiss said:

"The suit was brought to compel the railway company to do the express company's business. The controversy was about the right of the express company to require this to be done on the payment of lawful charges. It was no part of the object of the suit to have it definitely settled what these charges should be for all time. The point was to establish the liability of the railway company to carry. The decree requires the carriage, and fixes the compensation to be paid. It adjudges costs against the railway company, and awards execution. Nothing more remains to be done by the Court to dispose of the case."

This statement shows that the case can have no possible bearing on the appeals at bar. In that case the parties were before the Court and their controversy was settled. In these appeals the case is very different. When the decree of February 16, 1886, and supplemental decree of March 2, 1886, were entered these appellees were not even found to be the holders of claims entitling them to be regarded as parties to the suit. The character and amount of their claims were unknown and undetermined. They were entitled to nothing under that decree without *further litigation* and *further decree*. Hence, as to their controversy, it was not a final decree.

The case of *Bronson* v. *Railroad Company*, 2 Black (U. S.) 529, 530, cited by solicitors for appellees, clearly holds that the mere foreclosure part of a decree may be final, while the matters regarding the distribution of the proceeds of sale, and other controversies involved in the litigation, may remain undetermined and the decree as to such undetermined matters may be merely interlocutory. In the opinion Mr. Justice Davis said:

> "The litigation between Bronson & Soutter and the defendants, on any matter in which there was a joint interest is closed by this decree. The object of the suit was to ascertain how much money was due on the security of the mortgage, and to sell the property unless the amount was paid. The Court did find what was due, and ordered a sale. The very purpose of the litigation, which was initiated by Bronson & Soutter, was acomplished and nothing remained for them to do, if they felt aggrieved by the finding of the Court, but to appeal. Their right of appeal attached on the rendition of the decree, and the time limited in which an appeal could be taken, began to run from the date of the decree. It is said that some exceptions to the report of the master were pending and undetermined when this decree was made; but those exceptions did not relate to any claim of Bronson & Soutter: they were collateral to the main purpose of the suit and concerned the defendants alone."

All these cases cited in appellees' brief simply go to the point that *as to a foreclosure of the mortgages and sale of the railway and property* the decree of February 16, 1886, as modified by the decree of March 2, 1886, was a final decree. But, that being true, it does not follow that that decree was final as to the controveries presented by these appeals. It was not, and could not, possibly be final as to the controversies and claims of these appellees, for the litigation was not ended—was in fact hardly begun—regarding the claims and rights of these appellees. When these appellees finally concluded their litigation and the Court entered a final decree in their favor, which final decree involved a consideration of every question of right and priority in the entire cause, and which decree was rendered upon a consideration of the entire evidence in the cause, appeals taken from these final decrees bring before this Court for review the *entire cause*, and all the orders, entries and decrees made therein by the Court. On appeals in chancery this Court hears and decrees the entire cause *de novo*.

In *Bostwick* v. *Brinkenhoff*, 106 U. S., 3, 4, Mr. Chief Justice Waite delivering the decision of the Court, says:

"The rule is well-settled and of long-standing that a judgment or decree to be final, within the meaning of that term as used in the Acts of Congress giving this Court jurisdiction on appeals and writs of error, *must terminate the litigation between the parties on the merits of the case*, so that if there should be an affirmance here, the Court below would have nothing to do but to execute the judgment or decree it had already rendered. * * * If the judgment is not one which disposes of the whole case on its merits, it is not final."

Can it by any possibility be claimed that the decree of February 16, 1886, as modified by the decree of March 2, 1886, did "terminate the litigation" between these appellees and appellant Porter? Such a claim, in the face of this record, would be absurd. When the decree of sale was rendered, and when the sale was made, these appellees were not even recognized by the Court as holding any valid claims against the railway company. The Court referred the case to the Master to ascertain whether there were any claims, and if there were, who held them, and their respective amounts. In the meantime, until the litigation between the parties ended, and the Master made his report, the Court held the proceeds of sale without decreeing any distribution, and even without decreeing costs against any party. No authority has been, or will be, produced holding such a decree fina as to anything more than the foreclosure of the mortgages and sale of the property for cash. All other matters—even to adjudicating costs—being reserved for future decree.

In *Green* v. *Fisk*, 103 U. S. 519, 520, this Court holding a decree not final, said, Mr. Chief Justice Waite delivering the opinion:

"A decree can not be said to be final until the Court has completed its adjudication of the cause. Here the several interests of the parties in the land have been ascertained and determined, but this is merely preparatory to the final relief which is sought; that is to say, a setting off to the complainant in severalty her share of the property in money or in kind. This can only be done by a further decree of the Court. Ordinarily, in chancery, commissioners are appointed to make the necessary examination and inquiries and report a partition. Upon the coming in of the report the Court acts again. If the commissioners make a division the Court must decide whether it shall be confirmed before the partition, which is the primary object of the suit, is complete. If they report that a division can not be made and recommend a sale, the Court must pass on this view of the case before the adjudication between the parties can be said to be ended."

In *Beebe* v. *Russell*, 19 How. 283, it was held by this Court that "a decree is understood to be interlocutory whenever an inquiry as to matters of law or fact is directed preparatory to a final decision. * * * But the reference of a case to a Master, to take an account upon evidence, and from the examination of the parties, and to make or not to make allowances affecting the rights of the parties, and to report his results to the Court, is not a final decree; because his report is subject to exceptions from either side. * * * It can only be made final by the Court overruling the exceptions, or by an order confirming the report, *with a final decree for its appropriation and payment.*"

In *Young* v. *Smith*, 15 Peters, 287, appellants filed a bill in the Court below to recover from appellees, executors of one Parks, their proportion as legatees, and that an account of assets be taken. Decree was entered as prayed. The cause was referred to a Master, the Master reported, and exceptions to the report were filed; various other orders were entered, and finally a decree was entered that the Master's report be accepted, and a certain amount of money be paid to the plaintiff, and that the residue of the estate's assets should be paid into Court for distribution as fast as collected. Upon this state of facts the Court held that "the decree is an interlocutory and not a final decree. It is plain that it does not dispose of the whole matters in controversy between the parties."

In *Barnard v. Gibson*, 7 How., 659, this Court held "The decree is not final within the decisions of this Court, although the injunction was made perpetual. There was a reference to a Master to ascertain damages by reason of infringement; the bill was not dismissed, *nor was there a decree for costs.*"

In *Craighead v. Wilson*, 18 How., 199, one Erwin, having made his will, died leaving his property, heavily encumbered, to numerous claimants. Complainants filed a bill claiming part of the property as devisees. The Court having ascertained and decreed the relative rights of the claimants, referred the matter to a Special Master to state an account between the plaintiffs and defendants, specifying various subjects for accounting. The order appointing the Master stated: "The said Master may make a special report of any matters that may be requisite to a full adjustment of the questions in the cause." This Court held on motion to dismiss the appeal from the decree that "In no legal sense of the term is the decree a final one. The basis of the decree, embracing the equities in the bill, is found, *but the distribution among the parties in interest depends upon the facts to be reported by the Master.* It is his duty under the interlocutory decree to balance the equities, by ascertaining what has been expended on the property and what has been received by each of the claimants; and also every other matter which should have a bearing and influence on the distribution of the property. Until the Court shall have acted on this report and sanctioned it, giving to each of the devisees his share of the estate under the will, the decree is not final."

In *Ogilvie v. Knox Ins. Co.*, 2 Black 539, several judgment creditors of the appellee filed a bill praying for the amounts due them. The Circuit Court entered such decree ascertaing those amounts. Other creditors afterwards appeared, praying to be made parties to the bill, and that a Receiver might be appointed. The Court then appointed a Receiver according to the request of the petitioners, but before the funds of the company were collected the Court entered a decree that all the moneys recovered or to be recovered under the decree made at the previous term should be distributed among the original complainants, and the several persons who had filed their petitions praying to be made parties complainant, and appointing a Master to state an account. Upon this state of facts this Court, by Mr. Justice Grier, held:

"The appellants contend that this decree is erroneous, and unjust to the original petitioners. This may possibly be found to be true when the proper time comes to have it reviewed. But the appeal as well as the decree is premature. There is no final decree in the case. After the assets are all collected by the Receiver, so that the Master may ascertain the amount to be distributed, the question now proposed will be properly raised, and decided on exceptions to the Master's report. * * *

With these facts ascertained, the Court will be in a condition to make a final decree, which can be reviewed by this Court, but not till then."

In *Johnson v. Everett*, 9 Paige Ch. (N. Y.) 636, certain judgment debtors of one Burke filed their bill to set aside a conveyance to appellants as fraudulent. The Chancellor, upon hearing, decreed according to the prayer of the bill that said conveyance was fraudulent; that complainants were entitled to rents and profits, etc., and referred the matter to the Master to report the amount due complainants on their judgments, and on all matters as to rents, profits, etc. The decree also directed the appointment of a Receiver for the Burke property, and reserved everything else until the coming in of the Master's report. On a motion to dismiss appeal from that decree, on the ground that it was final, the Court held that the decree was not final, using this language:

"A decree is never final when it is impossible for the party in whose favor the decision is made ever to obtain any benefit therefrom without again setting the cause down for hearing upon the equity reserved, upon the coming in and confirmation of the report of the Master. * * * A decree declaring the rights of the parties merely, and directing an account in conformity therewith, but reserving the consequential directions, and decree with regard to costs until the coming in of the Master's report is not a final decree."

See, also, *The Palmyra*, 10 Wheaton 502.
Pulliam v. Christian, 6 How. 212.
Humiston v. Stainthorp, 2 Wall 106.

From these authorities, and many others that might be cited, it is clear, we think beyond controversy that that part of the decree of February 16, 1886 declaring priority over the mortgage bonds in favor of undetermined and wholly unascertained claims, held by unknown claimants, was not final or appealable. The amendment of March 2, 1886, rendered it nugatory. The entire conduct of the subsequent litigation, and the subsequent final decree show beyond dispute that the Court regarded that part of the decree as only interlocutory. Even if it had been a final decree, the record shows that *at the same term of Court*, the Court re-heard and reconsidered the *entire cause*, upon every point excepting the mere foreclosure and sale of the property. That on the final hearing when these decrees in favor of appellees were rendered, the Court heard and determined the case upon "all the evidence taken in the cause," and that the decrees of October 9, 1886, did adjudicate and decree upon the question of rights and priorities as between appellant Porter, as bondholder, and these appellees as holders of claims accrued for construction.

It is admitted by counsel for appellees that the decrees of October 9, 1886, were final and appealable. It is clear that they were as final and appealable in the matter of decreeing priority in payment in preference to the bonds, as they were in ascertaining and decreeing the amount due to each claimant, and other issues involved. It is also clear that an appeal from these decrees of October 9, 1886, brings into this Court for review every question and every ruling of the Circuit Court touching, or in any manner affecting the matters and questions adjudicated and decreed by those final decrees. One of the matters finally decreed by the decrees of October 9, 1886 was that the claims of these appellees should be paid out of the proceeds of sale of the railway in preference to the mortgage bonds. Another matter finally decreed by these decrees was the amount due to each of these appellees. With these facts, apparent on the face of this record, in view, it seems that the motions to dismiss have no foundation to rest upon, either in the facts of record, or in the law applicable to these facts.

In *Chicago and Vincennes R. R. Co.* v. *Fosdick*, 106 U. S. 83, 84, Mr. Justice Matthews, in pronouncing the decision of the Court, said, "It is manifest that a substantial error, to the prejudice of one of the parties, may originate in a decree, distributing the proceeds of a sale under a decree of foreclosure; and no question can be successfully raised against the right to appeal from such a decree."

From what has been said, and from authorities already cited, it is apparent that there is no foundation, in fact or in law, to support the proposition of appellees solicitors that Porter is estopped from contending for his right to the proceeds of sale as the holder of all the mortgage bonds, because his title to, and possession of the railway rests upon the validity of the decree of February 16, 1886, as modified by the decree of March 2, 1886. That decree as modified sold the railway for cash, "free and discharged of all liens and claims." It did not distribute the proceeds of sale, or determine the rights of the parties in those proceeds. On the contrary it *brought* *the proceeds of sale into Court*, to await *further litigation* between the parties, and the *further decree of the Court*. No claim against the Chicago and Great Southern Railway Company, or its property, excepting the claim of Porter as holder of the mortgage bonds, was then found or decreed to exist. Until some specific claim, for some definite amount, was found and decreed by the Court to be *a lien on the purchase money fund in Court*—not on the railway and property, for that had been sold "free and discharged of all liens and claims"—*prior and superior to the lien of the mortgage bonds*, and entitled to payment out of said fund in preference to said bonds, the right of Porter to have that purchase money fund applied upon his bonds and coupons remained unquestioned. Porter could not contest for his right to have the fund applied on his bonds until that right was assailed by some known claimant holding an ascertained and defined claim, and demanding payment of it in preference to the bonds. No such claimants were found,—no such claims were decreed to exist,—until the decrees of October 9, 1886, decreed that these appellees were holders of valid claims against the railway company, determined the amounts of their respective claims, and decreed that their claims should be paid out of the purchase money fund in Court in preference to the bonds and coupons held by appellant Porter.

These decrees of October 9, 1886, not only decreed a partial distribution of the fund in Court. *They also decreed that these claims of these appellees are prior in lien on that fund to the mortgage bonds and decreed that these claims be paid in preference to the bonds.* Hence appeals from these decrees in favor of these appellees bring into review by this Court, the entire cause, and all orders and action of the Court, affecting the question of priority of claims and liens as between appellant, as bondholder, and these appellees, as construction claimants.

3. It is gravely asserted that Porter has no interest in the fund in Court arising from the sale of the railway, and that therefore he has no right to prosecute these appeals, hence they should be dismissed. Such an assertion in the face of the facts shown by the record is so ridiculous as to be scarcely worthy of serious consideration. The facts are as follows:

On January 12, 1885, Porter paid Drexel, Morgan & Co., in cash, for the Chicago and Great Southern Railway Company's first mortgage bonds outstanding, $392,363.24. (Record, p. 922.)

Interest on this amount at 6 per cent. from January 12, 1885, to April 7, 1886—the day Porter got possession of the railway under his purchase at foreclosure sale—amounts to the sum of $29,102.22.

On April 5, 1886, Porter paid into court in cash and Receiver's certificates, for which he had paid cash, the further sum of $501,000.00. (Record, pp. 149–151.)

These three amounts aggregate the sum of $922,465.46.

This sum of $922,465.46 Mr. Porter had paid in cash before he got title to the railway. If he gets no part of this money back by having the purchase money fund applied upon payment of his bonds and coupons, the railway will have cost him in cash $922,465.46, which is over twice the amount counsel for appellees have repeatedly in their pleadings asserted the entire property to be worth. The assertion, in the face of these facts and figures, that Porter. as bondholder has no interest in this purchase money fund lacks candor and reason.

But it is further asserted that Porter bought the bonds from Crawford on December 26, 1884, under the agreement of that date called the "Syndicate Agreement," and that Crawford, having on the same day—December 26, 1884—assigned all his interest in the syndicate agreement to the First National Bank of Chicago, therefore any money drawn from the purchase money fund by Porter with the bonds and coupons would not go to him as bondholder, but would go directly to the benefit of the Bank.

It has already been shown in our original brief that Porter did NOT buy the bonds from Crawford on December 26, 1884, or at any other time, but that he did buy them directly from Drexel, Morgan & Co., the purchase of them being completed, so far as written contracts can complete a purchase, on August 20, 1884.

The letter of Nickerson and Porter to Drexel, Morgan & Co., of August 22, 1884, and Drexel, Morgan & Co.'s answer thereto of August 27, 1884, make this fact too plain for controversy. (Record, pp. 910, 911.)

That this contract for the purchase of the bonds by Porter and Nickerson from Drexel, Morgan & Co. was made with the full knowledge and *consent* of Crawford, and that it was to be an *actual purchase and sale of the bonds*, is conclusively established by the contract between

Crawford and Drexel, Morgan & Co. of June 25, 1884, and the contract between Drexel, Morgan & Co. and Porter and Nickerson of the same date.

(Record, pp. 906 to 908.)

Porter afterwards brought Nickerson's interest in the contract and became sole purchaser of the bonds.

(Record, pp. 921, 952.)

The contract between Porter and Crawford of December 26, 1884, called the "syndicate agreement," was made for two purposes, namely: *First:* To extinguish any right of redemption Crawford might still have in the bonds, Porter having bought them from Drexel, Morgan & Co. as property pledged to them by Crawford as collateral security. This point has been fully presented in our original brief. *Second:* By this contract Porter bought from Crawford *additional property*, not covered by the pledge to Drexel, Morgan & Co., to-wit: "*All the capital stock of the Union Coal Company, amounting in the aggregate to one hundred thousand dollars.*"

(Syndicate Agreement, Record, p 912.)

(Evidence of Henry H. Porter, Record, p. 473.)

This contract, and the contract of same date, by which Crawford assigned all his interest in the syndicate contract to the Bank, were entered into for the purpose of protecting the Bank, as far as possible, in its second pledge of the mortgage bonds. To effect this purpose Porter bought from Crawford $100,000 par value of fully paid, non-assessable, capital stock of the Union Coal Company—bought Crawford's right of redemption in the bonds for which Porter had paid Drexel, Morgan & Co. $392,868.24 as property pledged to them by Crawford—bound Crawford to cancel and discharge all further claim he held against the Railway Company for construction under his construction contract—made provision for payment for all unpaid-for right-of-way, and for all operating expenses that might be held payable under what is known in the Eighth Circuit as the "Six Months' Rule," and fixed $750,000 as the maximum price for which Porter and associates would account to Crawford—or his assignee, the Bank—for the entire property free from all debt, including the entire capital stock of the Union Coal Company.

(Agreements of December 26, 1884, Record, pp. 911 to 917.)

(Evidence of Porter, Record, pp. 473 to 477.)

At the time these contracts were made Porter constituted the entire "syndicate." The subscription paper or agreement by which the syndicate was finally formed was not written until January 2, 1885, and was not signed by the subscribers thereto until some time after that date.

(Subscription Agreement, Record, pp. 918 to 920.)

(Evidence of Porter, Record, pp. 459, 460, 479, 480.)

On page 453 of the Record Mr. Porter is made to say: "I did not pay the money *on* the 15th of January, 1885." This is simply a misprint. The sentence should read: "I did not pay the money *until* the 15th of January, 1885." Mr. Porter sent the drafts to Drexel, Morgan & Co., January 12, 1885. They were received by Drexel, Morgan & Co., January 14, 1885.

(Record, pp. 922, 928.)

That counsel for appellees understand that, under these contracts of December 26, 1884, the maximum price to be paid by Porter and associates for the entire property free from debt, including the entire capital stock of the Union Coal Company, was to be $750,000 and no more, is rendered certain by the questions propounded to Porter. (Record, pp. 462, 464.)

We have already seen that Porter has paid in cash the sum of - - - - - $922,465.46.
The Maximum price under the contract was $750,000 00.

Cash paid in excess of Maximum price, $172,465.46.

From these facts and figures it is plain that Porter is entitled to draw out of the purchase money fund with his bonds, the sum of $172,465.46 before the Bank, as assignee of Crawford, is entitled to a cent on its second pledge of the bonds. More than that, before the Bank is entitled to any part of this purchase money fund under its assignment from Crawford, Porter is entitled to have all unpaid right of way claims, and all claims for *operating expenses* falling under the "six months rule,"—if any are found to exist—paid out of the purchase money fund.

With these facts apparent on the face of the record it is worse than idle to assert that appellant Porter has *no pecuniary interest* in this purchase money fund.

As between appellant Porter, and these appellees and all other holders of claims accrued for construction, Porter is in law and equity entitled to every dollar of this purchase money fund for application in payment upon his mortgage bonds.

As between Porter and associates and the Bank, Porter is entitled to draw from this purchase money fund.

First, the excess over $750,000.00 already paid by him in cash—to-wit: $172,465.46.

Second, if any right of way is found unpaid for, or if any *operating expenses*, falling within the "six months rule," are hereafter decreed to be paid,—Porter is entitled to have them paid out of this fund before the Bank receives a dollar.

The Bank can get nothing out of this fund unless the fund is applied in payment on the mortgage bonds held by Porter, and then only what remains after the above excess paid by Porter has been refunded, and after right of way claims, and operating expenses, if any shall be found and decreed to exist, are paid. It cannot be held that Porter has no pecuniary interest in this fund.

In the assignment of errors in our original brief, we did not specificially assign errors on various rulings and interlocutory orders and decrees excepted to at the time they were entered, from the fact that those interlocutory orders and decrees culminated in the decrees in favor of appellees. The errors assigned were intended to cover the entire cause and every ruling made in it against appellant Porter. By these appeals all the questions are brought before this Court, which were decided to the prejudice of appellant.

"By this appeal all the questions are brought before us, which were decided to the prejudice of the appellants. From the nature of the controversy until the final decree was entered, as between all the parties, the case could not, properly, be brought before this Court."

Buckingham v. *McLean*, 13 How. 151.

II.

REPLY TO BRIEF OF SOLICITORS OF APPELLEES ON MERITS OF THESE APPEALS.

1. On the first page of their brief on the merits, counsel admit that the claims of these five appellees are "for labor or materials, used in the CONSTRUCTION of the Chicago and Great Southern Railway." This admission makes it clear that the chief question for decision is whether claims for *construction* of a railway are prior and superior in equity to the *mortgage bonds* of the railway company issued for value before the construction claims accrued.

There is no suggestion, or claim, made by counsel for appellees in their "statement of the case," that either of these appellees claim to be secured by any statutory lien taken under the lien laws of Indiana. Hence their claim of priority must rest on one of two theories, viz: *First*, That there was no valid mortgage, and that the bonds held by Porter were unlawfully issued and are void: or *Second*, That in law and equity a claim for construction accruing *after* a mortgage has been duly executed and recorded, and after bonds secured by it have been issued for value, is inherently prior and superior to the mortgage bonds. Counsel for appellees seem, from their statement of the case, in their brief, to have adopted the first of these theories.

On the second page of their brief we find the charge that Porter has "received part of the purchase money" derived from the sale of the railway. This statement seems to be made for the purpose of leading this Court to believe that part of the purchase money fund has been applied in part payment of the mortgage bonds held by Porter.

This is incorrect. Porter has not received a cent upon his bonds, nor has he received a cent of the purchase money in the sense in which the statement is made by appellee's counsel. Porter bid in the property for $501,000. He held all the bonds, and also held all the Receiver's certificates—having furnished the cash to the Receiver to keep the property from destruction when no one else would furnish a dollar. When the sale was confirmed the Court allowed Porter to pay into Court as money the Receiver's certificates he held; he paying all the balance of the purchase money in cash. (Record p. 152.)

The decrees of October 9, 1886, show that under this decree confirming the sale Porter paid into Court, as cash his Receiver's certificates and that he paid into Court the balance of his bid in cash. (Record p. 193)

Porter has never received a dollar out of this fund.

The first point of appell e's answer as stated on the second page of their brief on the merits, has been already discussed and authorities cited in our reply to appellee's brief on motions to dismiss these appeals. *Supra* pp. 1 to 42.

The second point of appellee's answer as stated on the third page of their brief, is put in question form in these words: "Whether, in the view of a Court of Equity, as against such claims for construction, there *was* any valid mortgage, duly executed by the corporation, or any bonds lawfully issued by it?"

This is stated as "the main question for decision."

This question, and the various theories touching it, as presented by counsel for appellees to the Circuit Court, were fully discussed in our original brief in behalf of appellant on pages 47 to 74. Appellees having as yet furnished us no part of their brief on the merits excepting their statement of the case, we will here only add to what was said in our original brief three suggestions.

First. If there was no valid mortgage, and if the bonds were unlawfully issued and are void, it follows of necessity that there has been no legal or valid foreclosure and sale, hence there is no purchase money fund legally under control of the Court It cannot be questioned that the decree of February 16, 1886, as amended by the decree of March 2, 1886, rests solely on the mortgages and bonds, and on their validity as binding and legal obligations of the railway company.

As we have shown in our reply to appellee's brief on motions to dismiss, *Supra* pp. 1 to 42, the foreclosure decree and order of sale, were final as to the validity of the mortgages and bonds, as to the amount of bonds outstanding and as to the amount of interest due on the outstanding bonds. That decree was not final as to anything else. If the Court had not decreed the mortgages valid, and found the amount due on the bonds, there could have been no sale. No other claim than that of the bonds, was then even established against the company as a floating debt claim, much less was there then any other *lien* than that of the bonds established.

No one of these appellees excepted to that decree. Swan and Atkinson excepted to the final parts of it but took no appeal. (Record p. 184.)

Second. The theory of appellee's counsel is that the mortgages and bonds are invalid because there was in reality no corporation. Henry Crawford being in fact the owner and controller of the entire enterprise, and the name of the corporation being used by him simply as an *alias* under which he carried on a scheme of chicanery and fraud.

If this theory is correct these appellees can have no possible standing in this court. The record shows conclusively that each of these appellees *contracted directly with the Chicago and Great Southern Railway Company as a corporation*. Their claims here presented are based wholly on their contracts with the railway company.

Third. Counsel for appellees' admit on page 32 of their brief on the merits that the indebtedness to three of these five appellees accrued between January 5, and September 1, 1888, *over a year after the mortgage had been recorded and $1,000,000 of the bonds issued and delivered for value.*

The record clearly establishes the fact that the claims of the other two appellees—The Cleveland Rolling Mill Company, and The Pittsburg Bessemer Steel Company—also accrued after the mortgage was executed and recorded and after $1,000,000 of the bonds secured thereby had been issued for value.

(Record pp. 43, 44, 767,770.)

How can these appellees question, or seek to set aside and avoid contracts entered into by the Railway Company *before they contracted with it, or had any dealings with it whatever?*

These appellees were not creditors of the Chicago and Great Southern Railway Company when the mortgage was executed and recorded, and the $1,000,000 of bonds secured by it were issued for value. They became creditors afterwards, and each of them as such creditor, received part of the money obtained on these bonds. Under what law or authority can they now question the validity of the mortgages and bonds?

It is settled by repeated decisions of this Court that to enable these appellees to attack the contracts made by the Chicago and Great Southern Railway Company with New, Trustee, in its mortgage, and with Crawford for the construction of its railway, *they must have been creditors of the Railway Company when the mortgage was executed and the bonds were issued, and when the construction contract was made.*

Smith v. *Vodges* 92, U. S. 183.

Graham v. *Railroad Company* 102 U. S. 148.

Hawes v. *Oakland* 104 U. S. 450.

Horbach v. *Hill* 112 U. S. 144.

The attempt on the part of counsel for appellees to claim that the capital stock of the consolidated Chicago and Great Southern Railway Company issued under the orders of the Board of Directors of February 18, 1884, and May 5, 1884, is unpaid stock and assessable against Porter, is very effectually disposed of in the dissenting opinion of Judge Woods. (Record p. 141.)

Part of this stock was issued in exchange for the original stock of the Chicago and Block Coal Railroad Company, and the Indiana and Chicago Railway Company—the constituent companies forming by consolidation the Chicago and Great Southern Railway Company. The Chicago and Block Coal Railroad Company having 8,648 shares of paid stock issued and the Indiana and Chicago Railway having 1,201 shares of paid stock issued. (Record p. 909.)

The rest of this stock was fully paid stock issued to Crawford under his construction contract as is shown by the records of the Railway Company.

(Record pp. 896, 897.)

The attitude of counsel for appellees becomes palpably absurd when we find them on one page of their brief contending that the mortgage and bonds are invalid because there was in reality no legal corporation, and on the next page contending that Porter as the present owner of the stock of this *invalid* and *mythical* corporation ought to be assessed on it as upon unpaid capital stock.

The greater part of the "statement of the case" in appellees' brief on the merits is a labored attempt to show that Crawford had full and complete control of the entire enterprise and dominated the directors in all of their corporate action from the day he bought the first stock from Foster, June 23, 1881.

In the attempt to do this, many reckless and incorrect statements are made. We will call attention to a few only as samples, well illustrating the general character of the statement.

On page 9 of this statement we find these words: "He—Crawford—appointed D. H. Conklin *General Superintendent* of the road." The record shows conclusively that William Foster was President, and William Foster's associates, neighbors and friends were Directors, from the inception of this enterprise down to March 15, 1882—about three months after the mortgage had been executed and recorded, and $1,000,000 of the bonds had been issued. This is what Foster swears as to D. H. Conklin. "He—Crawford—took control of the purchase of material and the giving of general directions to me to carry out, and in the latter part of the year he sent Mr. D. H. Conklin down to commence track-laying at Oxford, and I was in the general management of the road, excepting the right of way, but he took no personal control further than furnishing materials until after the 15th of March."

(Testimony of Foster, Record p. 317.)

Regarding the repeated statements that Crawford had control and dominion over the corporation from June 23, 1881, until March 15, 1882—which period covers the execution and record of the mortgage and the issuing of $1,000,000 of bonds secured thereby, which acts were done in November and December, 1881. We call attention further to the evidence of Mr. Foster, as found in the record on page 314. Foster swears most positively that he and his Directors *remained in control* until March 15, 1882.

As to the statement, repeatedly made, that the new Board of Directors elected on March 15, 1882, when Foster and his Directors resigned, were the mere creatures of Crawford, and abjectly subject to his control, we will let Mr. Starin, who was President of that new Board of Directors when the construction contract with Crawford was executed, speak for himself.

"Q. Look at the paper now shown you, and state what it is (handing paper to witness.)

A. It appears to be the original construction contract between Mr. Crawford and the Chicago and Great Southern Railway Company.

Q. Is that your signature there?

A. Yes, sir.

Q. When you executed that contract, were you aware, Mr. Starin, that you were committing fraud on anybody, or did you intend thereby to commit a fraud on anybody?

A. No, sir; I certainly had no thought of that kind.

Q. Were you asked or solicited by me, or was it suggested by me that you and I were engaged in an act to cheat or defraud anybody out of their rights by that paper?

A. No, sir; or I certainly should not have been a party to it.

Q. Were you in the sense set out in this petition my creature in signing that paper?

A. No, sir; I am no man's creature, and never have been; never will be.

Q. You executed that contract freely and of your own volition without any improper solicitation upon my part?

A. Why, certainly." (Record p. 576.)

On page 11 of appellees' brief on the merits we find this statement: "The mortgage and bonds in controversy were authorized at a meeting of the Board of Directors held on October 29, 1881. At that meeting six Directors were present. Two of them, Swan and Hardy, were not stockholders, Crawford having purchased the single certificate theretofore assigned to each of them. Neither were they stock subscribers. Of the other four present, constituting a minority of the Board, only Foster and Little at most, had any stock certificates. The other two, Forseman and Spoor, were stock subscribers to a small amount, and had each paid on account of the stock—or had credited on account of services as Directors—the sum of $50 each." Now let us see how the facts stand, as contrasted with this statement.

Swan swears as follows:

"Q. What did you do with your stock when you resigned?

A. Mr. Worden came to my house, I think, in *February, 1883*, and I assigned my stock to Mr. Crawford." (Testimony of Swan, Record p. 366.)

Hardy's certificate of stock and the assignment of it to Crawford,—put in evidence by the counsel for appellees, who wrote the above quoted statement,—prove conclusively that Hardy remained a stockholder until *June 22, 1882*. (Record p. 312.)

The record also proves conclusively that Foster, Spoor, Little and Forseman, were stockholders from the beginning of the enterprise down to March 15, 1882.

(Record p. 860, 861.)

Hence every one of the six Directors present at the meeting of October 29, 1881, was legally eligible to hold the office of Director. They had been constantly Directors and officers of the company from its organization, and remained such until March 15, 1882. But even if they had not been in fact stockholders, they were acting Directors—Directors *de facto*—holding themselves out to the world as Directors, and were recognized by the stockholders, and by the public as Directors, hence their official action as Directors certainly bound the company, and all parties claiming under the company. Authorities upon this point are cited in our original brief at page 51.

In addition to the authorities there cited, we cite the following decisions of the Supreme Court of Indiana, to the same point and effect:

Jeffersonville Association v. *Fisher*, 7 Ind. 699.

Smith v. *Bank of State*, 18 Ind. 327.

Steinmetz v. *Versailles Turnpike Co.*, 57 Ind. 457.

Williamson v. *Kokomo Etc., Associations*, 89 Ind. 389.

Hasselman v. *U. S. Mortgage Co.*, 97 Ind. 365.

In the "statement of the case" of appellees' brief on the merits the statement is made in substance, that none of the new Board of Directors elected on March

15, 1882, in place of Foster and his associates, were stockholders, and that none of them knew that any stock had been transferred to them by Mr. Crawford.

The records of the Railway Company show that the meeting of March 15, 1882, was held at Goodland, Indiana; that on that day Henry Crawford, in writing and in due form, assigned one share of stock to each of the following named persons, viz: Henry Crawford, jr., William A. Starin, D. H. Conklin, F. F. Lacey, H. Moore, G. W. McDonald, D. J. Lyon and H. Meiselbar. The records of the Railway Company further show, that F. F. Lacey, D. H. Conklin, Henry Crawford, Jr., and W. A. Starin *were then present at the meeting and took their seats as Directors immediately upon being elected.*

(Record pp. 862, 877.)

These four with Henry Crawford, sr., constituted a majority of the full Board of Directors.

Enough has been shown to warrant us in saying that the statements made by counsel for appellees in their brief should be taken with many grains of allowance.

In our statement of facts in our original brief, we tried to give a full, fair and accurate connected history of this entire matter, supporting every statement by reference to the record.

No error or misstatement in our statement has been specified by counsel for appellees. We therefore feel justified in referring the Court to it as a truthful statement of the facts and questions involved in these appeals.

2. The first proposition of appellees brief on the merits, covering pages 53 to 65, is only a restatement of

their brief on motions to dismiss these appeals. We have already discussed this proposition.

Supra pp. 1 to 43.

Appellees have in this brief cited two authorities under this proposition, not cited in their brief on motions to dismiss.

An attempt is made to put Mr. Porter, as appellant, solely in the attitude of *purchaser at foreclosure sale*, and that he, occupying only the position of *purchaser*, cannot complain of, or contend against, any orders or decrees entered in the cause *prior to his purchase.*

In other words the attempt is made to put Porter in the attitude of *first becoming a party to the cause* by his purchase at the foreclosure sale. The cases of *Blossom* v. *Railroad Company*, 1 Wall. 655, and *Swan* v. *Wright's Executor*, 110 U. S. 590, are cited to support the theory that Porter, because he is the purchaser, cannot contend against the priority claimed by these appellees. It is hardly necessary to state that this position is utterly untenable in view of the facts apparent on the face of the record.

Porter does not stand before this Court simply as purchaser of this railway. He stands here as *bondholder*, holding all the mortgage bonds of the railway company. He is here contending for his rights as *bondholder*.

In the opinion in *Swan* v. *Wright's Executors*, 110 U. S. 601, Mr. Justice Harlan very clearly and tersely draws the distinction between the rights of a *bondholder* and a mere purchaser under a decree making the sale *expressly subject* to certain claims then before the Court but undetermined. This authority becomes much stronger in favor of Porter, when we consider the further fact that the sale of the Chicago and Great Southern Railway was not made subject to any lien or claim, but was made expressly "*free and discharged of all liens and claims.*" Even if Porter had been a stranger to the cause at the time he purchased, he could, under the clear intendment of this decision, contest the right of priority asserted by these appellees. But Porter stands before this Court as *bondholder* contending for his rights *as bondholder*. The opinion is as follows:

"If the Court had, in the decree of sale, reserved to the purchaser, although not a party to the proceedings, the right to appear and contest any alleged liens then under examination, and, therefore, not established by the Court, an entirely different question would have been presented. But no such reservation was made; and the purchaser was required, without qualification, to take the property, upon confirmation of the sale, subject to the liens already established, or which might, on pending references, be established as prior and superior to the liens of the first mortgage bondholders. We do not mean to decide that the bondholders, as such (had they moved in due time), might not have maintained a suit like the present one, and, if successful, required the purchaser to pay them an additional amount equal to the claim established for the benefit of Wright's estate. Upon the question involved in that suggestion we express no opinion. All that we decide is that in view of the express terms of the decree of sale, and since neither the purchaser nor his grantee proposes to surrender the property to be resold for the benefit of those concerned, such purchaser has no standing in Court for the purpose of re litigating the liens expressly subject to which he bought and took title."

We find this strange statement in appellees' brief in speaking of the sale under the decree of February 16, 1886, as modified by the decree of March 2, 1886. "By the execution of that decree, the *mortgage upon the railway property was satisfied*, and the mortgage, in legal effect, cancelled." In another connection the statement is made that by the sale the mortgage "*lien has been satisfied.*" We venture the assertion that it has never before been asserted, or even suggested, that the sale, by a Court of Equity, of property subject to a mortgage, "free and discharged of all liens and claims," SATISFIED THE MORTGAGE.

The sale of this railway "free and discharged of all liens," lifted the lien of the mortgage from the railway, but it did not in any sense *satisfy the mortgage*, or discharge the mortgage debt. It simply transferred the lien of the mortgage from the property sold to the proceeds arising from its sale.

When that was done in this case no other claim against the railway company, or its property, was adjudicated, or decreed to exist. Porter's right to have this entire proceeds of sale applied to the payment of his lien, which was adjudicated and decreed to be a valid existing lien, remained unquestioned until some claim was ascertained, adjudicated, and decreed by the Court to be prior to his debt. When the Court entered such decrees Porter's rights were threatened, and his right to contend for priority in the payment of his debt in pref-

But even if the claims of these appellees had accrued prior to the execution and record of the mortgage, would that fact render the mortgage invalid, or postpone its lien in favor of indebtedness of the company to appellees? To so hold would be to hold that a man or a corporation can not make a valid mortgage to secure one creditor while in debt to other creditors. No Court has yet made such a decision as that.

But there is another reason, plainly proved by this record, why no one of four of these appellees could, in any Court of Equity, be heard to question the *validity* and *priority* of these mortgage bonds in preference to their claims. The record proves that The Bessemer Steel Company, The Cleveland Rolling Mill Company, The Smith Bridge Company, and Volney Q. Irwin, *each received in payment on their claims money which they knew was derived from the pledge of these bonds to Drexel, Morgan & Co.* The Pittsburg Bessemer Steel Company was paid $10,000 on May 10th and September 8th, 1883. (Record, p. 765.) The dates of these payments show that the money came from the Drexel, Morgan & Co. loan. The vouchers for the payments show that they were made directly by the agent of Drexel, Morgan & Co.

Crawford testifies that The Cleveland Rolling Mill Company, The Smith Bridge Company, and Volney Q. Irwin, all knew about the pledge of the bonds to Drexel, Morgan & Co., and knew that they received some of the money obtained on that pledge of the bonds.

(Testimony of Crawford, Record, pp. 651, 652.)

The evidence of Stubbs, agent for the Cleveland Rolling Mill Company, proves that that company received $22,634.36 directly from Drexel, Morgan & Co. (Testimony of Stubbs, Record, pp. 802, 803.)

The letter of the attorney for the Smith Bridge Company to Porter proves that that company knew of the pledge of the bonds to Drexel, Morgan & Co. (Record, p. 189.) The vouchers for the payments received by the company show that the payments were made by the agent of Drexel, Morgan & Co.

Irwin admits that he knew of the pledge of the bonds, and that he received some of the money directly from Drexel, Morgan & Co. (Record, pp. 536 to 545.)

Under this second proposition of appellee's brief, in the covert attempt to aid the claims of these appellees by broad general statements intended to include other creditors not before the court, we find on page 67 this statement: "The situation at the time the $1,000,000 of bonds were obtained by Crawford was, that the corporation was indebted to various third persons for labor and supplies. Their debts had been contracted by his own procurement, either in person or by his agents, upon the credit of the company, the creditors relying upon its property for payment."

There is not one word of truth in that statement so far as this record discloses.

We defy counsel for appellees, or any one, to find anywhere in this record any evidence that a single cent of the indebtedness against the company shown by the entire record of this cause, *had accrued or existed in any form when President Foster delivered the $1,000,000 of bonds to Crawford.* The only indebtedness of the company at that time, so far as this record shows, and so far as any testimony taken discloses, was the indebtedness to Crawford for the $400,000 he had paid out on the work of construction, and for the $85,000 Crawford had paid to Dull and McCormick in part payment for the Chicago and Block Coal Railroad. No claim for a dollar has been filed in this cause, dating the accruing of indebtednes back to December, 1881.

Pay-rolls and vouchers were introduced in evidence showing conclusively that construction employes and furnishers of materials were regularly paid until long after these bonds were delivered and hypothecated for value. (Testimony of Crawford, Record, p. 651.)

We are here trying only the claims of these five appellees, and have proved beyond question—from the face of the record—*that their claims all accrued after this $1,000,000 of bonds had been issued and pledged for value.* That is sufficient for these appeals. But if every claim filed in this cause were here before this Court not one could be found asserting that the indebtedness it represents accrued prior to January, 1882. Counsel for appellees are careful not to attempt to sustain their statement by reference to the record.

As late as February 7, 1882, we find the Board of Directors passing the following order, viz: "Ordered, That the President shall confer with Henry Crawford and *demand* that payment for labor shall not be made later than the 15th of each month for the preceding month." (Record p. 877.)

Does that look as though Crawford was *volunteering* his advances without any expectation of repayment or security for them? Does it look as though the Company so understood it? Would it not seem strange for a Railway Company to DEMAND prompt payment of all pay-rolls by the middle of the month, from a man who was making "voluntary advances of moneys on his part without any contract or agreement with the corporation for such advances or repayment?"

(Appellees' brief p. 67.)

Again on page 68 counsel for appellees say "What right had Foster to deliver these bonds for the corporation to secure Crawford for his *voluntary advances*, and leave the other creditors remediless?"

There were no other creditors then existing, so far as can be found from this record, hence no creditors were then left remediless by the issuing of the bonds. Counsel for appellees have shown no claim that existed in December, 1881. They cannot show any by this record. They knew that fact when they wrote their brief. Why they make such statements we leave this Court to infer without suggestion from us. But let us look a little into the testimony on the subject of "voluntary advances."

The President of the Company, while these large sums of money were being paid by Crawford out of his individual means, testifies that: Crawford "stood as the capitalist of the Company, buying material, sent it upon the road, and providing a certain amount of money for the grading.

Q. Under an arrangement with whom?

A. With me.

Q. You were the President?

A. With me and my Board of Directors.

Q. He was furnishing the money?

A. He was furnishing the money; yes sir.

Q. How long did that arrangement continue?

A. Until the 15th of March, 1882. * * *

Q. I would like to have you state in your own way just what contract, verbal or written, you had with Mr. Crawford about these advances between the 23rd of June, 1881, and the 15th of March, 1882?

A. There was no positive contract, except I conferred with my Executive Committee there and with our Directors in regard to issuing the bonds, and they were advised by me that I should place them in Mr. Crawford's hands, as he had got so much in the road, he agreeing to go on and negotiate those bonds *or use them* in finishing up and constructing the road—to build and equip it. There was no positive contract written; it was only a contract, and I delivered over the bonds to him there.

(Testimony of Foster, Record pp. 314, 319.

See also memorandum written by Foster and delivered by him in connection with the $1,000,000 of bonds.

(Record p. 864.)

See also testimony of Henry Crawford on this point.

(Record pp. 639, 640, 641.)

In view of all this testimony the claim that Crawford was making these advances as "voluntary advances" without any contract, express or implied, that he was to be repaid or secured, and without any expectation of being either repaid or secured, has no foundation to rest upon, and is inherently absurd.

But there is another fatal fallacy running all through this proposition of appellees' brief,—and largely through the entire brief,—it is this: The whole argument proceeds upon the theory that Crawford *never parted with the bonds.* The testimony proves that Dull and McCormick, Drexel, Morgan and Company, and Porter were successive holders of these bonds for large values parted with by them in perfect good faith upon the pledge of these bonds as valid securities. Abundant authority is cited in our original brief to the effect that these bonds in the hands of these successive good faith holders for value are protected by law against any such attacks, and are held absolutely valid and binding on the Company and its property covered by the mortgage. More than that we have shown that these appellees received part of the money obtained upon the pledge of these bonds with full knowledge that it was obtained upon the faith of the bonds as valid securities.

The third point of appellees' brief on the merits, covering pages 76 to 82 of their brief, was fully discussed, and authorities cited in our original brief on pages 56 to 62, to which discussion we refer the court. There are three complete answers to the assertion by appellees that the construction contract entered into between Crawford and the railway company on March 18, 1882, was fraudulent and void as against these appellees.

First. $1,000,000 of the bonds secured by the mortgage were issued and delivered to Crawford in December, 1881, and were by Crawford delivered and pledged to Dull and McCormick for value on January 27, 1882, while the construction contract was not made until

March 18, 1882. Beyond question the railway has never been worth more than the face of this $1,000,000 of first mortgage bonds. How a construction contract entered into three months after this $1,000,000 of bonds had been issued and pledged to a good faith holder for value can in any manner affect the validity and prior lien of those bonds is not stated by counsel for appellees. It cannot be stated by any one, because it is impossible for the construction contract to in any way affect the validity and priority of bonds issued for value before the construction contract was made. In addition to the evidence of Mr. Foster—*supra*, pp. 61, 62—relative to the issuing and delivery of this $1,000,000 of bonds, we call attention to the testimony of Henry Crawford on the same point.

"Q. Speaking about the Coal road and the hypothecation; it was understood between you and Foster that you should use those bonds to secure the payment of the debt to Dull & Co. for the Coal road?

A. It was. I had at that time, and to his knowledge, transferred that contract to the Chicago and Great Southern Railway Company, so that I was in this fix: I owed for the property, and yet I had transferred the right to it to the Chicago and Great Southern Railway Company. Mr. Foster, when he was on the stand, forgot, probably, a matter of recollection. Mr. Foster and I talked over the necessities of the situation, and what ought to be done with these securities, and, as I told you, I think I was in New York when he came up here and signed them, and Mr. Foster, at my suggestion, made a memorandum, which really never went into the form of a contract. I am not able to state at this time what was the special reason of it, but I now produce it as being a paper which really states what the understanding was with regard to these securities, it being a paper made by Mr. Foster at the time he signed these bonds and delivered them to me, and all in his own handwriting.

Mr. Peirce: Was it delivered to you?

A. I think it was not delivered to me; it was left for me.

Solicitor for complainant offered in evidence the paper produced by the witness, which is marked "Complainant's Exhibit 12."

(This memorandum appears in the record at p. 864.)

Col. Cooper: That memorandum you found for you when you returned from New York and found the bonds there?

A. My recollection of it is, I was in New York on other matters, and when I got back I found the bonds here, and Mr. Foster and I had stated before—we had discussed what should be done, and what the necessities required should be done in the matter, and I suggested that he should draw out a memorandum, and why it was never executed I don't know, but that is the original memorandum. It is all in Mr. Foster's handwriting, and states, as I remember it, the conditions under which he handed over the bonds. It only varies from his statement, as you perceive, in being more precise, and in stating that the bonds were to be held as my security after the Block Coal road had been taken care of, putting me in the second rank." (Record, pp. 675, 676.)

Second. The record shows that Crawford paid into the construction of this railway—including the purchase of the Chicago and Block Coal Railroad—in actual cash, out of his own means and the Drexel, Morgan & Co. loan, over $1,000,000 (Record, pp. 645 and 676 to 684), fully one half of which was paid out by Crawford before the construction contract was made. These bonds represent this money paid into construction. The very authorities cited by counsel for appellees completely sustain the proposition that even if the construction contract were held fraudulent, and even if the mortgage could also be held fraudulent, still this Court would hold the mortgage and bonds valid and a first lien to the amount and value actually received by the railway company in the way of construction. In *Thomas* v. *Brownville, etc., R. R. Co.*, 109 U. S., 526, this Court, by Mr. Justice Miller, in holding the mortgage fraudulent at the suit of *stockholders* said: "It is just that they should pay a fair price for what they have received; that this mortgage, given for the construction of the road, though excessive by reason of the fraud in the contract, should stand for the reasonable value of what the company actually received in the way of construction. To permit these intervenors to defeat the mortgage on any other terms would be unjust, and would make the Court the instrument of this injustice."

It is further worthy of notice that in every case where mortgages or contracts have been held fraudulent, either partially or wholly, it has been at the suit of *stockholders, never at the suit of general creditors of the company, who dealt with the company after the mortgage was recorded, and after bonds secured thereby had been issued for value.*

Third. The claims of these appellees *accrued long after this construction contract was made.* Counsel for appellees admit in their brief—page 32—that the claims of Crerar, Adams & Co., Smith Bridge Company, and Volney Q. Irwin *accrued in the year 1883.* The record shows that the claim of the Pittsburgh Bessemer Steel Company did not accrue until the *summer* or *fall* of *1882.* (Record, p. 770.)

The Cleveland Rolling Mill Company charges in its *sworn answer* that its claim now unpaid *accrued* "*after the first of July, 1882,*" (Record, pp. 48, 52), while the construction contract was made *March 18, 1882.*

(Record, p. 885.)

Mr. Crawford swears: "Towards the last of 1882 there began to be arrearages on labor and material accounts."

(Testimony of Henry Crawford, Record, p. 651).

Under what principle of law, or under what authority, can these appellees question or attack contracts made by the railway company long *before* their claims against the company accrued?

We have, in our original brief, and in this reply brief—*supra*, p. 46—cited repeated and unchallenged decisions of this Court, that *subsequent creditors* can not be heard to impeach a contract executed before their indebtedness accrued.

It is a sufficient answer to the fourth point of appellees' brief—pages 82 to 85—to say that there is no question in this case between Henry Crawford and these appellees. Henry Crawford is not a party in the foreclosure proceedings. He was made a party to the creditor's bill in the State Court under which the first Receiver was appointed. He answered in that suit, disclaiming any interest, and while that suit was still in the State Court, the Court decreed that Crawford recover his costs, and that he had no interest whatever in any controversy pertaining to said action.

(Stipulation, Record, p. 198.)

There is no issue presented or joined in the cause between Henry Crawford and these appellees, or either of them.

Crawford has not had in his possession, or under his control, a single one of the $1,000,000 of bonds since January 27, 1882—which was long before the claims of these appellees accrued, as we have herein above proved by citations to the record. That we are correct in this statement is proved by Crawford's testimony.

(Record, pp. 642, 643, 646, 693.)

The mortgage was not foreclosed as the mortgage of Henry Crawford, but as the mortgage of the Railway Company to John C. New, Trustee, Porter being the holder of all the outstanding bonds.

In our original brief, on pages 68 to 74, we discussed the fifth point of appellees' brief on the merits. We here refer the Court to that discussion. We also desire to call particular attention to the dissenting opinion of Judge Woods, as clearly showing the fallacy and absurdity of the position assumed by counsel for appellees. (Record, pp. 137, 138.)

The sixth and seventh points, or propositions of appellees' brief—pages 88 to 98—may be considered together. These two points were considered in our original brief on pages 60 to 68. No authorities are cited in support of these two propositions of counsel for appellees simply from the fact that no such authorities exist. Bold and unsupported statements may sometimes be good, but we have never known them to take the place of *authority* in this Court. It seems impossible for counsel for appellees to get rid of the false theory that these bonds stand before this Court just as though Crawford had held them ever since Foster delivered them to him, with written directions as to what he should do with them, in December, 1881.

They also seem to forget that they have *admitted* that the claims of three of these appellees accrued after these bonds had been pledged to Dull and McCormick for value, and repledged to Drexel, Morgan & Co. for a large cash loan, and that the record proves conclusively that the claims of the other two of these appellees accrued after the bonds had been pledged to Dull and McCormick. We have already, in this reply brief, cited the parts of the record proving these facts.

That these bonds are commercial paper is not, and can not be, disputed.

The record utterly fails to show that a shadow of suspicion as to the validity of these bonds existed until long after this litigation was commenced and a Receiver had been appointed. The first intimation of an attack upon the bonds, so far as the record discloses, came to Crawford in February, 1885, as a threat, because he refused to approve an incorrect account of an employe of the Railway Company. (Record, p. 668.)

The statement that "The bonds were pledged as Crawford's," found on page 93 of appellees' brief, *is not true*, as shown by the memorandum of Foster, (Record, p. 864,) and the testimony of Henry Crawford.

(Record, p. 693.)

In the face of the written contract between Crawford and Drexel, Morgan & Co., (Record, p. 902,) and the very careful legal examination Drexel, Morgan & Co. caused to be made by Bullitt & Hendricks (Record, pp. 932 to 936,) the statement of counsel for appellees found on page 89 of their brief, that Drexel, Morgan & Co. did not advance the money on the *faith* of these bonds, is amazing and worse than idle. If they did not advance the money on the faith of the bonds why did they require every dollar of it to be paid out on the construction by their own agent? That such was the requirement the contract proves. That that requirement was exactly performed is proved by the evidence of Crawford, Irwin, Starin, and the vouchers.

There is not, in the entire record, a single particle of evidence proving, or even remotely tending to prove, that either Dull and McCormick, or Drexel, Morgan & Co., or Henry H. Porter, when they successively took these bonds, had the slightest suspicion, intimation, or knowledge of an irregularity, infirmity or invalidity in the bonds. This is true for the best reason in the world, namely: *There was no irregularity, infirmity or invalidity in the bonds.*

The testimony of Mr. Jewett (Record, pp. 548 to 560); the contract, and careful legal examination made by Drexel, Morgan & Co., cited *supra;* the testimony of

Henry Crawford (Record, pp. 684, 685, 686, 693, 694, 695); and the testimony of Henry H. Porter (Record, pp. 494, 495, 498 and 502 to 505), prove beyond question that Dull and McCormick, Drexel, Morgan & Co., and Henry H. Porter successively took these bonds as valid commercial securities in perfect good faith, and paid large values for them, without the slightest knowledge or suspicion of any informality, irregularity or invalidity in the bonds. As we have seen, there was in fact no invalidity in them or taint upon them, but even if there had been these innocent holders for value would be protected, abundant authority is cited in our original brief in support of this position.

If these holders of these bonds are not protected against these latter-day attacks upon these bonds by way of bald assertion, unsupported by a shadow of proof, the law and authorities on the subject of commercial paper are a farce and delusion.

The eighth section of appellees' brief—beginning on page 98—purports to discuss this proposition, viz: "The equities of appellees to be paid out of the assets of the corporation, the amounts of their respective claims, *in preference to Henry Crawford.*"

This proposition has no possible bearing on these appeals. Henry Crawford has no claim before this Court. He has filed no claim in the cause in the Circuit Court. Long before the creditors' suit was removed from the State Court he answered in that suit specifically disclaiming any claim against, or interest in the property. and the State Court decreed "that he, said Crawford, had no interest whatever in any controversy pertaining to said action." (Record, p. 198.)

The only theory under which this proposition can be relieved from condemnation as arrant nonsense, is the theory that Crawford *has never parted with the bonds, but is still their owner*, and that, therefore, the contention here is between these appellees and Crawford, instead of between these appellees and Porter as shown by the record.

We shall waste no words in further discussing this proposition. It is not worthy a moment's consideration. Every page of the record proves it to be utterly without foundation in law or in fact.

Under this proposition counsel for appellees present what they claim to be the "special equities" of each of these appellees in severalty. The first presented is the claim of

THE CLEVELAND ROLLING MILL COMPANY.

Regarding this claim they make the following statement: "It will be seen that the claim of this appellee had accrued *before* the delivery of the $1,000,000 bonds to Crawford in the latter part of December, 1881. Mr. Butler, in his brief, says (page 6) this occurred "about the last of December, 1881." The *special equity* of this appellee, then, lies in the fact, that its debt had accrued when Crawford took the bonds."

(Appellees' Brief, p. 101.

This is the only equity asserted in behalf of this appellee. In close contrast with, and in direct contradiction of this asserted equity we quote the following from the *sworn answer* of this appellee:

"The Cleveland Rolling Mill Company says, for itself, that under and by virtue of a contract and agreement with the said Chicago and Great Southern Railway Company during the years 1881 and 1882 it furnished for the said railway company a large amount of iron rails for the building of said railroad, the last payment for which *was and became due and owing this defendant*, under various agreements with said railway company, *after the first of July, 1882.* * * * *

"And these defendants, further answering, say that *the materials* furnished for the building of said railway by each of them respectively *was furnished*, and the indebtedness therefor became due to them, and each of them, respectively, *after the default in the interest on the bonds of said railway company*, as set forth and complained of by said complainant in his bill of complaint.

"And that *after the first default in interest* complained of by said complainant in the bill of complaint, *the said material was used in the construction of the said railway by the said railway company*, and for the benefit and advantage of the said railway company." (Record, pp. 43, 44.)

This answer is sworn to by "the agent and attorney for the Cleveland Rolling Mill Company."

(Record, p. 52.)

What becomes of this only "*special equity*" of this appellee under the sworn answer? It seems to dissolve and melt away.

But even if the claim of this appellee had accrued prior to the execution of the mortgage and the delivery of the bonds, and their hypothecation for value, would that create any "special equity" in favor of this appellee? It gave credit to the company as a general creditor in the usual course of business. There is no pretense that it was, or was to be, in any way secured. It gave credit as an unsecured, floating-debt creditor. It never has been held, and it never will be held, that such indebtedness prevents a railroad company from making a valid mortgage, and from issuing valid bonds thereunder, which bonds, on delivery for value, become a *first and prior lien* on all the property covered by the mortgage.

In attempting to show that this appellee did not receive part of the Drexel, Morgan & Co. loan, with knowledge that the money was obtained on the pledge of these bonds, counsel for appellees quote from the testimony of Mr. Chisholm, President of this appellee. Chisholm admits that he met Crawford in the bank of Drexel, Morgan & Co., while Crawford was negotiating the loan from them, and talked with him about the indebtedness to appellee. He admits that Crawford told him that he expected to get a loan from Drexel, Morgan & Co , out of which appellee would receive some money, but he denies that Crawford told him the loan was to be secured by the bonds.

This denial is unreasonable and improbable. He had contracted with the *railway company*. He understood that a loan was about to be made *to the railway company*, out of which he would get money due from the railway company. Is it likely that he failed to ask, or that Crawford failed to tell him, how the railway company was to secure the loan? Even without question or answer he would undoubtedly understand that a loan to a railway company would be secured by the bonds of the company secured by mortgage on its property.

Crawford swears positively that he told Chisholm all about his negotiation, and how the loan was to be secured. (Record, p. 652.)

Stubbs, agent and broker for appellee, testifies that the payment to appellee was made by check on Drexel, Morgan & Co., and his letter to Mr. Chisholm remitting the payment proves the fact. (Record, pp. 796, 802.)

Chisholm swears that this appellee never took, or attempted to take, any lien under the statute of Indiana. (Record, p. 800.)

There is therefore no possible view of the case under which this appellee has, or can reasonably claim, an equity or right, either in law or equity, to have its claim paid in preference to the mortgage bonds.

THE CLAIM OF THE SMITH BRIDGE COMPANY.

It is conceded by counsel that the claim of this appellee accrued long after the mortgage was executed and recorded, and long after the bonds were issued and pledged for value. It is not claimed or pretended that any lien was taken under the Indiana statute.

It is not claimed that the appellee took any steps to prevent the use of the bridges by the company. On the contrary, the record shows conclusively that long after the bridges were completed and in full use and possession of the railway company, with the full knowledge of appellee, Tolerton, as attorney and agent for appellee, adjusted the account, and took from Crawford his individual check for the balance found due—there having been paid by the railway company the sum of $18,850 on the two bridges. (Record, pp. 808, 809, 816, 822.)

On December 5, 1884, Tolerton, as attorney for this appellee, wrote to Porter stating that he (Tolerton) was apprised of the fact that he (Porter) *had become the owner of the bonds*—it will be remembered that Porter's contract and purchase of the bonds from Drexel, Morgan & Co. became absolute and complete on August 20, 1884. In this letter he refers to the contract, and states that he is about to bring suit in the United States Court *to enforce the contract.* (Record, p. 925.)

Porter answered this letter on December 9, 1884, saying that the road being in the hands of a Receiver, he (Porter) could take no step to weaken the position of appellee, and would not if he could. (Record, p. 927.)

We considered this claim in our original brief—pages 80 to 86—and beg to refer the Court to what was there stated, and to the authorities there cited.

The claim of this appellee is for iron bridges constructed and used in the road. "*They were put in place on foundations furnished by the company.*"

(Record, p. 810.)

Counsel for appellee seem to rely wholly upon the contract under which these bridges were built. We have cited, in our original brief, repeated decisions of this Court, holding that such contracts are no protection, and do not hold the property, when the material furnished *becomes affixed to, and a part of the property covered by the mortgage*. When that is the case the mortgage holds the property as against such conditional contracts.

Counsel for appellees seem unwilling to recognize this clear and plain distinction, but this Court has very clearly drawn this distinction in repeated decisions, finally settling this question.

Galveston Railroad v *Cowdrey*, 11 Wall. 480, 482.

United States v. *New Orleans Railroad*, 12 Wall. 365.

Dunham v. *Railway Company*, 1 Wall. 254.

Dillon v. *Barnard*, 21 Wall. 440.

In the case of *Fosdick* v. *Schall*, 99 U. S. 235, cited by counsel for appellee, the controversy was over some freight cars. This Court, by Mr. Chief Justice Waite, again very clearly draws the line of distinction, in these words, found on page 251:

"These cars were "loose property, susceptible of separate ownership and separate liens," and "such liens, if binding on the railroad company itself, are unaffected by a prior general mortgage given by the company and paramount thereto." *United States* v. *New Orleans Railroad*, 12 Wall. 362."

Counsel for appellees have cited no authority in conflict with these repeated decisions, which are conclusive against the claim of priority asserted by the Smith Bridge Company.

We utterly fail to find, in the case of *Clarkson* v. *Stevens*, 106 U. S. 505, anything tending to hold that the taking of Crawford's personal guaranty on the contracts between the railway company and the Smith Bridge Company "is of no consequence," as asserted by counsel for appellees. On the contrary, we find on pages 516 and 517 of the report of that case, statements strongly tending to support our position that the taking of this personal guaranty on their contracts by the Smith Bridge Company, did show an intention *not to rely upon, but to waive*, the part of the contract upon which the claim of priority is now based. On this point see authorities cited in our original brief, pages 77 and 78.

That this appellee knew of the pledge of the bonds to Drexel, Morgan & Co., clearly appears from Tolerton's letter, and by the testimony of Crawford.

(Record, pp. 189, 652.)

The vouchers for the payments, made to this appellee, show that the money came directly from Drexel, Morgan & Co.

THE CLAIM OF VOLNEY Q. IRWIN.

Counsel for appellees virtually admit that the claim of this appellee cannot be sustained on the theory stated in the Master's report, (Record pp. 185 to 187.) which is the theory adopted by the Circuit Court in overruling our exceptions to this report of the Master. Our exceptions appear in the record.

(Record pp. 191, 192.)

Finding that the report of the Master and the ruling of the Court in overruling our exceptions to that report cannot be upheld or supported on an examination of the law, counsel for appellee, Irwin, now shift their ground and boldly assert. "1. That the Indiana redemption law is wholly inapplicable to a case like this; and, 2. If it should be held otherwise, the Indiana redemption law was never complied with by New so as to destroy Irwin's lien." These are quite remarkable statements. What a pity it is that counsel for appellee, Irwin, failed to enlighten the Master on these points in their argument before him, in which they earnestly argued for just the report as made by the Master. They should also have informed the Court on these same points when the exceptions to this report were under consideration, and should have prevented the Court from falling into the same error with the Master regarding the law.

In support of these newly discovered propositions, counsel for appellee assert that Irwin's work, consisting of "grading embankments and excavations," *was "not subject to execution."* They then advance this theory: "This work not being subject to sale on execution, a judgment creditor could not redeem it and have it sold on an execution in the nature of a *venditioni exponas*" as provided by the Indiana redemption law.

This whole presentation of the Irwin lien matter by counsel for appellee borders on the ridiculous, when brought in contrast with the plain provisions of the laws of Indiana.

When Irwin took his lien and brought suit thereon the Indiana statute approved March 6, 1883, on that subject was in force. It will be found in the Sup. to R. S. 1881, Secs. 6951 to 6966.

We quote enough of this law to prove that Irwin's "grading, embankment and excavations" when he had perfected his lien and obtained jugment thereon, *was subject to sale on execction.*

"Sec. 6956. HOW AND WHEN ENFORCED. —6.

"Any person having such lien may enforce the same by filing his complaint in the Circuit or Superior Court of the county where the labor was performed or the materials or machinery furnished, at any time within one year from the time when said notice has been received for record by the Recorder of the county; or if a credit be given from the expiration of the credit, and if said lien shall not be enforced within the time prescribed in this section, the same shall be null and void, *and the Court rendering judgment shall order the sale to be made, and the officers making the sale shall sell the property without any relief whatever from valuation or appraisement laws.*"

This section applies particularly to mechanics' and builders' liens, but is made to do service also for railroad contractors, as we shall see by another section of the same law.

Section 6962 gives railroad contractors the right to perfect liens upon their work, including "grading, embankment or excavation, and upon so much of the track of such railroad as is covered by such grading, embankment or excavation."

Section 6963 is as follows: "Any person desiring to acquire the lien provided for in the last preceding section, shall give notice of his intention to hold such lien by causing a notice thereof to be recorded in the Recorder's office of the proper county in the same manner, and within the same time, as above provided, for giving notice of mechanic's liens; and any person having given notice within the proper time, *may enforce* *such lien in the same manner as mechanic's liens.* Such suit must be brought within one year from the time such notice was filed in the Recorder's office.

It is absurd to contend in the face of these clear provisions of law, that the grade and track on which Irwin perfected his lien was "not subject to sale" on an execution, precept or decree rendered in favor of Irwin. No amount of Illinois and Ohio authority can change or overturn these plain provisions. Counsel for appellee, Irwin, cite no decisions of Indiana in support of their absurd theory. The Circuit Court of Warren county, Indiana, seems to have regarded the railroad covered by Irwin's lien as subject to sale on execution and decreed "*said sale to be made as other sales on execution.*" (Record p. 787.)

Irwin had it sold on execution and himself bought it. (Record p. 791.)

New redeemed it from this sale on execution and received his certificate of redemption from the Clerk of the Warren Circuit Court. (Record pp. 792, 793.)

But under their recent discovery counsel say that New never redeemed "so as to destroy Irwin's lien." Why this particular redemption failed to work the legal effect provided by the statute counsel fail to tell.

The Clerk evidently regarded the redemption complete and issued the usual certificate cited *supra.* How counsel for Irwin expect here in this court to overturn the records of the Warren Circuit Court, we are not informed.

That the redemption law—part of which is quoted in our original brief on pages 94 to 97—is applicable to sales of this kind is too plain for controversy in view of the provisions of the statute in that behalf.

We find the redemption law of Indiana in our code of civil procedure under the head of "execution." The first part of the first section of the law reads as follows:

"[illegible] 766. CERTIFICATE OF PURCHASE—CONTENTS—DUPLICATE—RECORD—ASSIGNMENT. I. *Whenever any real estate or interest therein shall be sold by the Sheriff on execution or decretal order*, he shall issue to the purchaser (or, if the real estate be sold in parcels, to different purchasers, to each purchaser) a certificate of purchase. Such certificate shall show the Court in which the judgment or decree was rendered, the parties thereto, and date thereof, the dates of the execution and sale, the name of the owner and purchaser, and price paid; and shall contain a particular description of the premises and the estate therein sold, whether in fee, for life, or for years; and shall state the time when the purchaser will be entitled to a conveyance of the property." (R. S. Ind. 1881.)

Section 774 of our redemption law, quoted in our original brief at page 97, clearly provides that the law is applicable to just this case, and that MORTGAGEES—with recorded mortgages have the right to redeem from any sale made *on execution or decretal order*, and that the property so redeemed by a mortgagee may be resold, "and any sale—subsequent to such redemption—of said real estate in pursuance thereof shall be absolute."

It is plain that there is nothing in these new theories regarding Irwin's lien. The theories only make it clear and plain that counsel for Irwin admit that the position taken by the Master, and followed by the Circuit Court in overruling our exceptions and rendering decree in favor of Irwin, is untenable and cannot be upheld by reason or authority.

The suggestion made by counsel for appellee Irwin, that perhaps the road was *a finished road* when Irwin took his lien, and that therefore the law did not permit him to take a lien on part of a *completed road* in operation, is hardly worthy of consideration.

It is in direct conflict with the charges repeatedly made that Crawford never completed the road, and that it went into the hands of the receiver in an unfinished condition. The record contains many such charges as that. But proof positive is in the record showing that on October 17, 1883, when Irwin filed his lien (Record p. 784) the railway was not completed. No trains could then pass over it.

The report of Henry Crawford to the Board of Directors on February 18, 1884, shows that the road was not then so far completed as to be opened for business. He says: "As contractor having charge of the construction of the road, I have to report that the division of the line from Fair Oaks Junction to Yeddo has been completed, and is *now about ready for business.*"

(Record p. 895.)

The final estimate of the engineer of the company to Smith Bridge Company, shows that the bridge across Pine Creek—which is in Warren county—was not completed until February 5, 1884. (Record p. 821.)

F. H. Peters testifies that he was engineer in charge of *construction work* until June 1, 1884.

(Record p. 020.)

A careful examination of the pay-rolls and vouchers—which were all introduced in evidence and were before the Court at the hearing, but which were not copied into the record for this Court on account of their great number and length—shows that the road was not completed ready for business, and was not used for general business until some time in April or May, 1884. The work of construction continued some time after that date.

Irwin filed his lien October 17, 1883, hence it is clear that his lien was not void or illegal because taken on a completed road. The road was not completed or opened for business for many months after his lien was filed. There is no avoiding the conclusion that Irwin had a valid lien on part of this railway. He exhausted his lien by the sale made under his judgment foreclosing his lien. He measured the value of his lien by his bid. The redemption by New as mortgagee was perfect and complete. He got a good certificate of redemption. (Record p. 792.)

This redemption did NOT bring the property back under the lien of Irwin's judgment. Our law of Indiana clearly prohibits that. Since that sale and redemption Irwin has had *no lien whatever* on any of this property. The decree in his favor ought to be reversed.

PITTSBURGH BESSEMER STEEL COMPANY.

Counsel for this appellee admit that its claim accrued after the mortgage was executed and after $1,000,000 of bonds had been issued for value. The only claim to priority asserted by counsel in behalf of this appellee is based on the contract, or rather on a supposed or implied vendors lien.

We have already shown in discussing Smith Bridge Company claim, *supra* p. 75, and in the discussion in our original brief pages 75 to 86, that no conditional contract of sale, and no vendors lien either express or implied, will apply to cases where the material sold becomes *part of the railway track and superstructure*, as these rails furnished by this appellee did. The very case cited by counsel for the appellee,—*United States* v. *New Orleans Railroad Company*, 12 Wall. 365,—is a strong authority in our favor on this point. If the rails were *completely delivered* at Pittsburgh there is nothing in all the claim heretofore made by counsel for this appellee that the railway company wrongfully took possession of the rails after they were stored at Goodland. But we have before shown that any wrong in that taking—if there was any—was waived by this appellee when it received part payment, and acknowledged the rightful possession of the railway company by taking payment, and settling for balance and taking Crawfords personal check therefor.

The *purpose* of the Steel Company to retain ownership amounts to nothing against our mortgage when the rails were laid in the track. Abundant authority has already been cited on this point, we will not here repeat the citations.

There is no reason, or authority, in support of the decree in favor of this appellee. It should be reversed.

CRERAR ADAMS AND COMPANY.

There is no pretence that there is any special equity in favor of this appellee. Counsel for appellees have not attempted to support the decree in favor of this appellee by any law or authority.

It is an ordinary floating debt, for *construction supplies*—Counsel for appellees admit this, see first page of their brief on merits,—accrued a full year after the mortgage was recorded and after $1,000,000 of the bonds had been issued and pledged for value.

No case can be found where any Court either of law or equity has ever held such a debt to be prior in lien to the lien of the mortgaged bonds. The decree in favor of this appellee cannot be sustained by reason or authority. It should be reversed.

The assertions in the last part of appellees brief, viz: That the real controversy here is between Crawford and appellees: That appellant has no interest in these appeals or in the result of them, and that the amount decreed to these appellees are *part of appellants purchase price* reserved by him to pay either to Henry Crawford or to these appellees, have been already fully answered. *Supra pp. 36 to 43.*

The claim that the contract of December 26, 1884, —made months after Porter had bought the bonds from Drexel, Morgan and Company and long after all these claims had accured, and the rights of the appellees had been created and fixed so far as they have any rights here —could *create any equity* in favor of appellees is not worthy of consideration. The claim is devoid of reason.

We have, in both our original briefs, and in this reply brief, shown clearly that Porter did *not* buy the bonds of Crawford on December 26, 1884, nor at any other time. He bought them from Drexel, Morgan & Co. under a contract which became absolute on August 20, 1884. All he bought from Crawford, by the contract of December 26, 1884, was the Coal Company stock, and the *equity of redemption in these bonds*.

The eleventh head of appellees' brief is only a restatement and repetition of what is before asserted in the brief.

It proceeds entirely upon the theory that *Crawford still owns the bonds*, and is the *real party in interest*. We have, in another connection, proved from the record the absurdity of this position. The premises being false the conclusions must be erroneous.

The doctrine that "equity looks through all forms to the real substance of things," is a very good one. We fully believe in it. But we never before heard that under the shadow of this principle *facts*, and *law*, and *common justice* are to be ignored and set aside.

We understand that equity follows the *law*, and adheres to the *truth*, and is governed by well-settled rules of equity jurisprudence. Under these rules the Circuit Court had no right to set aside well proved facts, and and overturn an unbroken line of authority extending back to the beginning of railroad enterprises and railroad litigation, in order to make this mortgage and these bonds subordinate and inferior to ordinary, unsecured, floating debts for construction, accrued after the bonds were outstanding for value. If these decrees are sustained it will only be done by overruling a long list of well-considered decisions of this Court, now recognized as well-established law.

All the authorities cited, under this head of appellees' brief, have no possible bearing on these appeals upon the *facts* disclosed by this record. They are authorities applicable in *more or less* degree to cases having an entirely different *state of facts* than these cases at bar. What has the question whether a stockholder of a railway company can or can not demand *his portion* of the capital he has paid in and apply it on payment of the debt of the company to him, to do with the cases of these appellees? There is no point in these appeals to which such authority can, by the utmost straining, be held applicable.

The claim of appellees that the stock bought by Porter from Drexel, Morgan & Co. is *unpaid assessable* stock has been already answered, *supra*, pp. 46, 47. It is also fully disposed of by Judge Woods in his dissenting opinion. (Record, pp. 141, 142.) There is nothing in the record in support of the proposition, while the proof against it is conclusive.

The resort by counsel for appellees to such a claim and assertion to support these decrees proves quite conclusively that they have really no support in law or equity.

The brief of appellees on the merits has been furnished to us in fragments and proof-sheets—some of it not being furnished even in that crude form—sent from Chicago at not less than six different times, hence we have been obliged to answer it in a fragmentary way rather than as a whole. This may have caused some repetition which have been avoided if counsel had furnished us their brief in a reasonable time after receiving our brief. We furnished them our brief on December 11, 1886, and they have on this January 3, 1887, furnished a large amount of proof-sheets purporting to be the closing parts of their brief. We have answered all that has been furnished.

We ask that each of these five decrees may be reversed.

Respectfully submitted,

J. E. McDonald,
John M. Butler,
A. L. Mason,
Solicitors for Henry H. Porter, Appellant.
By John M. Butler.

Indianapolis, Ind., January 8, 1887.

120—649

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No. 1280.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1886.

HENRY H. PORTER,
Appellant,
vs.
THE PITTSBURGH BESSEMER STEEL COMPANY, (Limited), THE CLEVELAND ROLLING MILL COMPANY, THE SMITH BRIDGE COMPANY, CRERAR, ADAMS AND COMPANY and VOLNEY Q. IRWIN,
Appellees.

Appeal from the United States Circuit Court, for the District of Indiana.

SUBMITTED UNDER THE TWENTIETH RULE.

BRIEF FOR APPELLEES.

JOHN S. COOPER,
ADDISON C. HARRIS,
WILLIAM H. CALKINS,
SOLICITORS FOR APPELLEES.

BARNARD & GUNTHORP, LAW PRINTERS, 47 & 49 LASALLE ST., CHICAGO

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1886.

NO. 1280.

HENRY H. PORTER, *Appellant,* *vs.* **THE PITTSBURGH BESSEMER STEEL COMPANY, (Limited), THE CLEVELAND ROLLING MILL COMPANY, THE SMITH BRIDGE COMPANY, CRERAR, ADAMS AND COMPANY and VOLNEY Q. IRWIN,** *Appellees.*	**Appeal from the United States Circuit Court, for the District of Indiana.**

STATEMENT OF THE CASE.

The amounts directed to be paid to each of the appellees, by the order or decree appealed from, were due to them, for labor or materials, used in the construction of the Chicago and Great Southern Railway. It was ordered to be paid out of the proceeds of the sale of the railway, and in accordance with, and to carry out a former decree, by which the lien in favor of appellees' claims was established as prior to that of the mortgages securing appellants' bonds, and the entire property sold to satisfy both liens.

Appellant procured the decree for foreclosure and sale to be executed; himself became the purchaser; procured the sale to himself of the property, freed from all liens, to be confirmed; received part of the purchase money, and afterwards, when the Circuit court ordered the payment of appellees' claims out of that purchase money, derived by the foreclosure of their lien, he appealed to this Court, where his principal contention is, that so much of the first decree for foreclosure and sale, as established the claims of appellees, as liens "prior, superior and paramount" to the lien of his mortgages, was erroneous.

To this appellees answer:

1st. That the former decree cannot be reviewed on this appeal, except so far as to learn from it, whether the Circuit court followed its provisions in making the decrees or orders of payment appealed from; and this because:

The moneys ordered to be paid appellees were so much of the proceeds of sale of the property, as was represented by their prior liens thereon, established by the decree for foreclosure and sale; and that appellant could not procure the property to be sold, in satisfaction of their prior liens, and himself became purchaser, and then turn about and deny the existence and validity of the very liens under which, and to satisfy which, in part, the property was decreed to be sold.

Neither can he in this manner have that former decree, nor appellees' priority of lien, reviewed.

2d. That if appellees are in error in this respect, and that on this appeal the former decree can be reviewed, then it is contended on behalf of appellees, that the Circuit court committed no error in decreeing the lien in favor of appellees' claims, and their satisfaction out of the purchase money, as a preference to the bonds of appellant. Upon this branch of the case it is submitted that the Court will not find that the main question presented for decision is, as claimed in behalf of appellant, in one of the briefs of his counsel: Whether claims accrued for construction of a railway have a lien upon such railway prior to the lien of a mortgage duly executed and recorded, and bonds issued thereunder, prior to the time when the claims for construction accrued? But rather: Whether, in the view of a court of equity, as against such claims for construction, there *was* any valid mortgage, duly executed by the corporation, or any bonds lawfully issued by it?

That the main question presented for decision is, whether, where one man, owning all the capital stock of an insolvent railway company, and controlling all corporate action through a board of directors, who are the obedient agents of his will (and of whom a majority are disqualified from acting as directors, under the charter of the company, by reason of not being shareholders), can contract debts in the name of the company for the construction of its road (which debts he was bound, by a pretended contract with the corporation, himself, to pay), and then defeat the rightful claims of such creditors, by the device, of having such board of directors authorize the execution of a first mortgage upon the property of the company, securing its bonds, and then himself take the bonds, representing, in part, the indebtedness due to such creditors, and by foreclosing the mortgage bar the claims of such creditors?

Another question is: Can a person thus situated, who, being in absolute control of the corporation, has issued to himself, in its name, a large amount of its capital stock, for which he, in a court of equity, owes the corporation an amount largely in excess of the claims of such creditors, foreclose his mortgage in such court of equity, against such insolvent corporation, and leave such creditors remediless?

Another question is: If such person cannot be allowed so to do himself, then can he transmit any better right to a purchaser of all such bonds and unpaid capital stock, where such purchaser has knowledge of the facts surrounding the origin, execution and issue of such bonds and stock, and has reserved and retained in his hands, out of the purchase price of such securities, more than enough to pay all such claims of creditors under the terms of a contract which requires him to pay to such seller whatever the court, in the foreclosure proceedings contemplated by the contract of purchase, shall not adjudge to be equitably payable out of the proceeds of sale to such creditors?

STATEMENT OF FACTS.

Appellant, by different counsel, has made two separate assignments of error, and filed two briefs, in which are embodied separate and different statements of fact. We do not find that either, or both, state the material facts entirely correctly. Indeed, many important facts are omitted. This makes it necessary for the appellees to submit a statement of facts in their own behalf.

1. On the 23d day of June, A. D. 1881, William Foster, president of the Indiana and Chicago Railway Company, was the owner of 1,205 shares of the capital stock of the Indiana and Chicago Railway Company (which name was subsequently changed to that of the "Chicago and Great Southern Railway Company"), of $50 each, amounting to $60,250 par value. (Rec., 309). That was all the stock for which certificates had been issued up to that time, and was represented by certificates numbered 1 to 17 inclusive. Certificates, numbered from 1 to 12 inclusive, were each for $5,000, of one hundred shares each. (Rec., 373 and 374.) Certificates numbered from 13 to 17, inclusive, were each for $50, of one share each. (Rec., 868.) The railway company had been incorporated under the general railway law of Indiana, in force May 6, 1853. By the latter part of the fourth section of that act it is provided: "Not less "than seven nor more than thirteen directors shall be "chosen at such meeting of stockholders, by ballot, and "by a majority of the votes of the stockholders present "in person or by proxy. Every such stockholder so

"present at any election for directors shall be entitled to "give one vote for every share of stock which he may "have owned for ten days next preceeding such election; "but no stockholder shall vote at any such election upon "any stock such as he shall not have owned for ten days. "No person shall be a director unless he shall be a stock-"holder, owning stock absolutely in his own right, and "qualified to vote for directors at the election at which "he shall be chosen. The directors shall hold their office "for one year, and until others are elected in their places." (See Revised Statutes of Indiana of 1881, Sec. 3,892, page 818.)

By the articles of association the company was to have a board of nine directors to manage its affairs. (Rec.,869.)

2. Prior to the 23d of June, 1881, Henry Crawford had purchased from A. J. Dull and Henry McCormick all the capital stock of the Chicago and Block Coal Railway Company, consisting of 8,648 shares, of the par value of $50 per share. That such was the amount of each share, and that the total par value aggregated $432,400, appears from the letter of Drexel, Morgan & Co. to Crawford, of May 9, 1884. (Rec., 905, 906.) That road was about twenty miles in length, and extended from Yeddo to Attica, Indiana, the latter being its northern terminus, and the point to which Foster and his board of directors were extending the Indiana and Chicago railway southwardly. For the unpaid purchase price of the stock of the Block Coal company, Crawford had given his notes to the sellers, secured by all the stock.

3. On the 23d of June, Crawford purchased from William Foster $50,250 of the stock of the Indiana and Chicago Railway Company represented by certificates

numbered from 3 to 17, and amounting to 1,005 shares, which left the other two certificates, numbers 1 and 2 for $10,000, in the possession and ownership of Foster.

The contract of sale and purchase contained a guaranty, on the part of Foster, that the shares transferred represented all the stock that had been actually issued, except the $10,000 represented by the two certificates retained by Foster; and also a guaranty that the railroad company was under no obligation to issue any further stock except in connection with procuring certain rights of way. It further provided that Crawford should pay the purchase price, part in cash at the time, part in ten days, and the remainder within thirty days, and that, after the remainder should be paid, Foster guaranteed that the present board of directors of the company should, at Crawford's request, resign. (Rec., 859, 860.)

Soon after the above purchase of stock Mr. Crawford began to make contracts for material and labor for the construction of the railway, which the purchased stock so largely represented, and took active measures for the building of the road.

4. The relations which Mr. Crawford sustained to the company from this time on, until the delivery of the million dollars of bonds to him in the latter part of December, 1881, and his control and domination over the corporation and its board of directors, appear not only from the various acts which he did, but also from his own testimony. On being called by appellant as a witness, and asked by the latter's counsel whether, after the 23d of June, he had any particular arrangement under which he furnished the money for the construction of the railway, his answer was: "I don't know what you

"call a particular arrangement. I went on and furnished the money—at first because I was acting under the impression *that I practically owned that piece of property*, and while I was not formally in control of it, "yet that whenever I desired to control it, the control was "obtainable." (Rec., 638.)

With reference to the $10,000 of stock retained by Foster, Crawford testified that he looked upon it rather as a gratuity that had been voted to Foster for services, and that it never had any value in his eyes until he was compelled to buy it, in March, 1882. (Rec., 668.) After he had bought from Foster the $10,000 of stock, in March, 1882, he says: "I can state that I was the "owner of $60,250 of stock. I think, and I thought "then, that I owned every share of stock on earth that "the corporation had outstanding, *and was its sole and absolute proprietor, as much as I am of the clothes I am in.*" (Rec., 673.)

His relations to the corporation during this period, he compares to the right which a man, owning a horse and buggy, has in the matter of driving—that he "had the "impression that a man who owned a horse and buggy "had a right to drive it." (Rec., 669.)

In making the contract of June 23d, he says he thought, when he made that contract, that he "was buying "everything in the way of stock issued, or that could be issued, except the $10,000 which I" [he] "afterwards "bought from him" [Foster], "taking out of view the obligation to issue stock to a very small amount for the right "of way that I intended to pay in money, so that you are "entirely correct in stating that I presumed I was buying "the entire property, just exactly as my contract recites, "free of debt, and free of any obligation to issue another "dollar of stock, except the $10,000 of Mr. Foster." (Rec., 667.)

The following are some of the acts of control of the corporation which from and after the 23d of June, 1881, Mr. Crawford exercised: He appointed D. H. Conklin general superintendent of the road. (Rec., 264.) The proceedings of the company, copied from the record book, nowhere show any authority from the company or its board of directors or officers for such appointment.

He negotiated and confirmed the contract for the purchase of 2,000 tons of steel rails in September, 1881, from the appellee, the Bessemer Steel Company. (Rec., 771, 772.)

In October, 1881, he made a contract in the name of the corporation for 1,000 tons of iron rails with the Cleveland Rolling Mill Company, one of the appellees. (Rec., 862, 863.) William A. Starin testifies that in the year 1881 Crawford negotiated the purchase of all the steel rails which entered into the construction of the road.

All the supplies which Crawford bought after the 23d of June, 1881, used in the construction of the road, were bought in the name of the railway company, and wherever they were bought on credit, the railway company was made the debtor therefor. (Rec., 639.)

On July 14, 1881, the secretary of the company resigned and Crawford's son was put in his place. (Rec., 875.)

Crawford procured the resolution to be passed on the 29th of October, 1881, by the directors, authorizing the mortgage and bonds, and caused the mortgage to be prepared and sent to the officers of the company for execution. (Rec., 297.)

Z. F. Little, one of the Foster board of directors, and former secretary of the company, testified as follows:

" Q. Under whose advice did the board of directors " act, if any one's, from the 23d of June, 1881, down to " the 15th of March, 1882.

" A. I think all the business of any kind that was " transacted was brought by Mr. Foster from Mr. Craw- " ford, at least he so represented it, and it was done with " that understanding, at Mr. Crawford's request.

" Q. Does that include the execution of the mortgage " and the bonds?

" A. Yes, sir." (Rec., 374.)

A fair statement of the evidence bearing upon Crawford's control of this corporation, and the obligation of the company to him for the moneys spent for construction after June 23, 1881, would be: That the directors and officers of the company looked upon him as proprietor, and did whatever he wished, save in the matter of approving a proposed construction contract, which he sent to them for ratification, and they only refused that because, if carried out, it would have rendered Foster's $10,000 of stock valueless:

That Crawford regarded himself (with the exception of Foster's stock) as absolute owner and proprietor of the corporation. He advanced money and provided material, with no more purpose of making a charge or claim therefor against the corporation, than if he had been building a house for himself on his own land. So that up to about the time the $1,000,000 of bonds came into his possession, he neither had nor claimed any obligation against the company.

5. The mortgage and bonds in controversy were authorized at a meeting of the board of directors held on October 29, 1881. At that meeting six directors were present. Two of them, Swan and Hardy, were not stockholders, Crawford having purchased the single certificate theretofore assigned to each of them on June 23d. Neither were they stock subscribers. (Rec., 860, 861, 868 and 876.) Of the other four present, constituting a minority of the board, only Foster and Little, at most, had any stock certificates. The other two, Forseman and Spoor, were stock subscribers to a small amount, and had each paid on account of the stock (or had credited on account of services as directors), the sum of $50 each. (Rec., 860, 861.)

Crawford himself believed, as he testifies, that not one of them, except Foster, had any stock, or the slightest interest in the corporation. So, also, did each of his pledgees and the appellant, as will be subsequently shown, at the respective times all the bonds and stock came to their hands respectively. The resolutions provided that the president should make the mortgage or trust deed to such trustee as he might select, and authorized the president to do all acts necessary to execute and negotiate the bonds.

The resolutions are very brief, and they gave as unlimited power to the president, in so grave a corporate matter, as might be expected from a board of directors who had no interest in the corporation.

But this large discretion, committed to the president, was, *in fact*, exercised by Crawford. As has been shown, the latter prepared the form of the mortgage and bonds, and, as the evidence tends to show, selected the trustee. (Rec., 639.)

Having prepared the mortgage, Crawford sent it to Foster, at Goodland, Indiana, to be executed by him as president of the company.

Foster signed the mortgage, as president, at Goodland, Indiana. (Rec., 317, top page, and 297.)

The acknowledgment of the mortgage, however, by Foster, as president, and H. Crawford, Jr., as secretary, was made in the city of Chicago, Illinois, before a notary public for Cook county, Illinois. (Rec., 753, 754.)

The bonds were signed in Chicago by Foster. But before that, Crawford had procured John C. New, the trustee, to execute them, so that they could be issued. (Rec., 316.)

6. The delivery of $1,000,000 of bonds to Crawford seems to have taken place in about the same matter-of-course way, and for the same reason that the other corporate acts of this company were performed—because Crawford requested it.

It would appear, from the evidence on this important transaction, that the bonds, having been prepared by Crawford, and signed by his son, as secretary, and by New, as trustee, were in his (Crawford's) vault. He then sent word to Foster to come to Chicago and sign them. Foster came, and, in Crawford's absence, dealt with Mr. Starin, the confidential clerk of the latter.

The transaction appears to have consisted in Starin taking $1,000,000 of the bonds out of Crawford's vault, and passing them to Foster, who, having signed them, passed them back to Starin, by whom they were put back in the vault. (Rec., 573, bottom page, and 574, top page, and 316 and 317.)

About this time—the latter part of December, 1881

—was the first that Crawford made any suggestion about having any claim against the corporation for his own advances. During the summer and fall he had been dealing for the corporation, and contracting debts for material in its name, upon the principle that he owned it.

But in the latter part of the year the financial outlook grew dark. It is apparent that Crawford had it in mind from the first that he was to have control of the mortgage bonds to be issued by the company, through the medium of a construction contract with himself, which he testified was the only known way to "get out of a corporation in "any form" its securities. As will be shown, he prepared such a contract, dated as early as October, 1881. That had not been ratified by the directors. He therefore asked for some of the bonds.

Crawford testified as follows:

"A. In the fall of 1881 times financially were getting "very squally, and I had put a large amount of money "into the work, and I desired that they should give me "some bonds on which I could raise money, both for the "purpose of putting into new work north of Attica, as "well as for the purpose of meeting obligations for the "purchase of the coal road. That is the only instance "where there ever was any talk between myself and the "officers of the Great Southern Railway Company at "that time with regard to giving any security. I never "asked the company for any note, nor was there ever "any talk of that kind." (Rec., 639.)

At the time Foster signed and left with Starin for Crawford the $1,000,000 bonds, he left an unsigned memorandum, providing for applying the proceeds. By that memorandum, the "proceeds" of the bonds were to be applied, first, to the payment of the note given for the purchase of the Block Coal railroad stock; second, to reimburse Crawford for money advanced, and to be thereafter advanced, for the construction and equipment of the railroad; third, any balance from the proceeds of the first issue, or any subsequent issue, to be applied to the extension and development of the road covered by the mortgage securing the bonds. And it was provided that Crawford was to furnish the necessary amount of money to pay the debts contracted since the 1st of July, 1881, and to furnish and equip the line of road from the junction of the Air Line to Attica as fast as work could be done. (Rec., 864 and 865.)

That the bonds were asked for by Crawford, and signed for delivery by Foster to secure Crawford for his past or future advances, appears to be an afterthought of counsel to justify such delivery, rather than what the parties mentioned at the time. The memoranda made by Foster indicates a clear purpose on his part, that the bonds should be *sold* and their "*proceeds*" used for the purposes mentioned.

7. Crawford appears to have sent the $1,000,000 of bonds to New York and placed them in a safe deposit there prior to January 27, 1882. On that day he met there Mr. Dull, one of the parties from whom he bought the Block Coal railroad stock, with John N. Jewett, the latter's attorney. In order to get an extension on his overdue note given for that purchase, Crawford delivered to Mr. Dull the million dollars of bonds, and procured a stipulation from New, the trustee, that no more bonds should be issued without Dull's consent. Crawford also signed an agreement to deliver to Mr. Jewett all the stock upon their return to Chicago. (Rec., 549-552.) That

Mr. Jewett, as Dull's attorney, learned and knew all about Crawford's relations to the corporation will appear further on.

8. On February 7, 1882, the Foster board of directors had a meeting, and for the first and only time refused to do what Crawford wished. He had sent down, to have ratified by the directors, a proposed construction contract between the company and himself, which the board rejected unanimously.

Crawford's explanation of this refusal, when on the stand, was, that it was for the purpose of compelling him to buy the remaining $10,000 of Foster's stock. (Rec., 668, 669.)

It is a significant fact, bearing upon Crawford's control over the corporation after June 23, 1881, that without any previous negotiations with the officers or directors of the company, he should have sent such a contract to the directors as the one in question, to be approved as a matter of course.

By that contract, he was obligated to build pretty much such a railroad as he might think proper, without the intervention of any engineer to direct and supervise the construction on the part of the company, and for which he was to receive all the securities of the company representing the property at the rate of about $35,000 per mile, and all other assets of the corporation of every kind whatsoever. The proposed contract bore date of October, 1881, showing that, thus early, Crawford's purpose was to become owner of all the securities representing its property through the medium of a construction contract. (Rec., 864–867.)

9. On March 15, 1882, Crawford bought the remain-

ing $10,000 of stock from Foster represented by certificates Nos. 1 and 2, and took an assignment of $2,790 of unpaid stock subscriptions, from liability for which he agreed to protect the various subscribers. It was further agreed, that on the execution of the contract by which the transaction was evidenced, the members of the Foster board of directors should resign, and their places be filled by persons named by Crawford. (Rec., 861 and 862.) Thereupon a meeting of the board of directors was called, and each of the nine directors resigned, and their places were filled by the following persons named by Crawford, as provided in the contract:

H. Crawford, Junior, Crawford's son.

W. A. Starin, confidential clerk to Crawford.

D. H. Conklin, Crawford's superintendent of construction.

F. F. Lacy, Crawford's clerk.

Henry Moore, Crawford's employe in right-of-way matters.

D. J. Lyon, an attorney in Crawford's office, doing Crawford's business for his office rent.

George W. McDonald, an attorney in Crawford's employment.

Henry Meiselbar, Crawford's former clerk and stenographer; and lastly, Henry Crawford himself, who was also elected president. (Rec., 270.)

The board of officers was filled out by the election of H. Crawford, Jr., as treasurer, and by electing D. H. Conklin as general superintendent. (Rec., 877, 878.) These new directors, so far as they were placed upon the stand, testified that they had no interest in the company, and acted precisely as Crawford wished them to, because they regarded him as the sole person in interest, and none of them owned any stock. (Rec., 274, 275, 286, 290, 324, 325, 336.)

Crawford, on the day they were elected, March 15, 1882, wrote and signed a paper by which he pretended to assign to each of them one share of stock. (Rec., 862.)

That document he appears to have kept in his own possession. because he produced it on the hearing. (Rec., 662.) The directors themselves, when sworn, were not aware that they had any stock, and none, except McDonald, that any had ever been assigned to them.

Besides this, the only stock issued was the $50,250 bought by Crawford from Foster on June 23, 1881, and the $10,000 bought March 15, 1882. All this stock, John N. Jewett, attorney for Dull & McCormack, testifies he received from Crawford some time after January 27. 1882, and held as security for Crawford's note to them. He also had the record book to satisfy himself that Crawford had delivered to him all the issued stock of the company. He says it might have been a month or two after he returned from New York. It therefore must have been after the directors' meeting of March 15th, because Crawford did not have the $10,000 of Foster's stock until that date, and the record book showed the fact, that in addition to the stock bought of Foster June 23, 1881, and represented by certificates numbered from 3 to 17 inclusive, amounting to $50,250, that there were two other certificates for $10,000, numbered 1 and 2. Besides, Mr. Jewett testifies that he saw the proceedings of the meeting of March 18, 1882, recorded in the record book when it was delivered to him. (Rec., 556, 557.)

It is therefore perfectly clear that not one of these new directors, except Crawford, was ever a stockholder in the company. The corporation then was not only under Crawford's domination in fact, but—as he swore he regarded himself—he was in effect a "corporation sole." From June 23, 1881, he and Foster were the sole stockholders down to March 15, 1882. From thence onward he was himself sole stockholder, except as he may have constituted Dull & McCormick,—and afterwards Drexel, Morgan & Co.—such, by his pledge of all the issued stock with them.

10. Three days after Crawford's board of directors was elected, with Crawford himself at their head, they met at Chicago, on March 18th, at Crawford's office. The record recites that they were all present, except McDonald and Moore: That the first thing done was the resignation of Crawford as president and director, and the election of Wm. A. Starin as president, leaving Crawford's vacancy as director unfilled: That the next thing, was to approve the mortgage to John C. New, trustee, of November 1, 1881, and order it spread upon the records: (Rec., 878.)

Whereupon it is recited that the president reported "that a construction contract *had been entered into*" between the company and Henry Crawford, providing for the acquisition by the company of the Block Coal railroad and the consolidation of the two properties, and construction of the railroad, "*which said contract*" the president reported to the directors for full confirmation. A resolution was thereupon passed that the construction contract be approved and confirmed and spread upon the records. (Rec., 855.)

The provisions of the contract itself are unique, and can be better understood by the Court from an examination of the contract itself. (Rec., 885–888.) Its provisions may be summed up in the statement, that Crawford was to procure the right of way for, construct and complete the entire railway from its northern terminus, at a junction with the Louisville, New Albany and Chicago railroad, southwardly to Brazil, and equip the road ready for business, for the consideration of $2,000,000, each, of first mortgage and income bonds, and capital stock, and all donations of stock, land, money, etc., made to the company.

He was to procure a right of way "of sufficient width," and also "sufficient and suitable grounds," for depots, sidings, etc.

He was to place in the track a certain number of ties "either of oak, hemlock or other proper wood," and lay down thereupon "either iron or steel rails."

He was also to equip the road with "a sufficient "amount of engines and passenger and freight cars to "enable it to handle, with reasonable promptness, all the "business that may be offered to it at such time as it is "completed and opened for business, being such an "amount of equipment as is usually placed upon roads of "similar character upon completion." No provision was made for the work to be done under the supervision of an engineer or any other agent of the company.

As the work progressed he was to be paid in first mortgage and income bonds, and stock at the rate of $15,000 per mile in each kind of securities, and for the appraised value of equipment placed upon the road in first mortgage bonds at the rate of sixty cents on the dollar:

That the company, for his accommodation, should execute its promissory notes or acceptances to enable him to proceed with the work of construction, upon condition that he should pay the same at maturity and save the company harmless therefrom:

That if Crawford, at his expense, should acquire and have consolidated the road of the Block Coal Railroad Company, he should be allowed and paid the same amount of first mortgage and income bonds and stock per mile as if he had constructed that road under his contract:

That if, at any time during the progress of the work, he should be unable to market the first mortgage bonds at such price as would net him seventy-five cents on the dollar, he could stop work, terminate the contract and receive full compensation for the work done at the full contract prices:

That if the company should thereafter extend its road southwardly from Brazil, its southern terminus, that then Crawford should have the right to construct and equip that extension for the compensation in the contract provided, viz, $20,000 per mile in full paid stock, and a like amount in first mortgage and income mortgage bonds, in all, $60,000 per mile of main track and all donations that might be procured.

It is perfectly clear that even under the *terms* of that contract Crawford was bound to build the road *and pay for it as a condition to receiving bonds or stock.*

It could hardly be claimed, that he could do the work on the credit of the corporation, and then take the securities provided for in the contract, leaving the company saddled with the debts therefor, and the creditors without remedy.

When the contract had been ratified by the directors, the treasurer, his son, reported to the board that for advances made and to be made by Crawford, "there had "been delivered to him *to be accounted for under such* "*contract*, 1,000 bonds of $1,000 each;" and also that Crawford had transferred to the company a written contract for the sale to the company of the stock and assets of the Block Coal Railroad Company.

Those matters were also confirmed by the directors. (Rec., 888.)

This is the first mention on the books of the company of the delivery to Crawford of the million dollars of first mortgage bonds, *and is the only recorded action of the company anywhere as to the disposition of those bonds*, because the only book of the corporation kept after Crawford took control, was the record-book.

Wm. A. Starin, who was elected president at this meeting of February 18, 1882, testifies that before the meeting convened, Crawford told him that he, Crawford, desired to resign as president and the board would elect Starin in his place. That he, Crawford, had prepared a construction contract to be drawn up, which he wanted the board to approve, and he did not wish to be contractor and president at the same time. He says: "I knew in a "general way what business Crawford desired the board "of directors at that meeting to do, and I directed the "meeting myself with reference to that." (Rec., 566.)

D. J. Lyon, another director who was present, testified that he gave no consideration to the matter, and no discussion was had. (Rec., 324.)

This is Crawford's testimony, when placed on the stand as a witness for appellant:

" Q. I will ask you to state, Mr. Crawford, how you " came to enter into this construction contract with the " railway company?

" A. Well, I don't know as I can state in any coher- " ent way exactly how I came to do it; I presumed at the " time that construction contract was made, that I was " practically a corporation sole; that I owned every share " of stock that had been issued by the concern, and " although I never regarded the stock as of any special " value, I was in a still different position from that, and " that was that I had invested a very large sum of money, " and that the only way you that could get out of a cor- " poration in any form—the stock or bonds of a corpora- " tion—the usual method is through the agency of a con- " struction contract, and it was done rather more as a for- " mality than anything else." (Rec., 656.)

It is thus clear, as a matter of fact, that the contract, although, as a matter of form, made between Crawford and the corporation, was in fact made by Crawford with himself as owner, and in absolute control of the railway company.

It is perfectly clear also, as a matter of fact, that Crawford had never made any contract up to this time with the corporation for the possession or ownership of the million dollars of bonds, save as he was able by his control over the company to get Foster to sign them for him, and by his control over his own board of directors to dictate the above method of accounting for them.

Whilst he was providing the money for the construction of the road from June 23, 1881, down to December of that year (when he received the bonds from Foster), he did so, not under any contract or arrangement for bonds as security, nor even with any express or implied understanding that such advances would constitute a debt against the company in his favor, but as owner of the property.

It would seem to be unnecessary to consume much time in stating the facts going to show that at the date the construction contract was entered into, and from thence onward until the appointment of the receiver, Henry Crawford was in the absolute and unchallenged control of this corporation, through its board of directors.

But as those facts may have an important bearing upon the decision of this case, some of them are here stated.

In addition to the fact that each one of the directors was in his own employment, and that not one of them had the slightest pecuniary interest in the corporation, and that four of the nine directors, were sworn, and testified that what they did, as directors, was what Crawford directed them to do, and the fifth one, that he did not *know* he was a director: there is the evidence that the contract was prepared by Crawford himself.

The contract, in its language, appears to have been copied mainly from the proposed contract which Crawford testified the Foster board of directors had "thrown back in my" [his] "face." It had some important additions, however. It increased his compensation from $2,000,000 of first mortgage bonds and $1,500,000 of preferred stock, by substituting for the latter $2,000,000 of income bonds and $2,000,000 of full-paid capital stock, so that instead of getting securities at the rate of $35,000 per mile, he should receive $60,000 per mile.

Mr. Crawford himself wrote up the records of the meeting of March 18, 1882, as well as most of the other important meetings after that date. (Rec., 261–263.)

The record book of the corporation he kept in his personal possession, and generally at his private residence, so that Mr. Starin, the new president, was never able to inspect it, although he endeavored to do so. (Rec., 591 and 592.)

As bearing upon this question of fact as to what corporate action this company took through its board of directors, as their proceedings are recorded in the record book, it should be stated that three of the new directors —Starin, McDonald and Meiselbar—testify that the records show them to be present at meetings which they did not attend. (Rec., 281, 282, 334–335 and 578.)

The subsequent history of this corporation will conclusively demonstrate, that all the directors, officers and agents of this company did or left undone precisely what Crawford directed.

11. The knowledge of Crawford's relations to the corporation, which Dull and McCormick (the persons for whose benefit Crawford had hypothecated the $1,000,000 of bonds on January 27, 1882, in New York) had, through Mr. Jewett, their attorney, appears from the testimony of the latter. As has been shown, that transaction was to be completed by Crawford's assignment to Jewett of all the issued stock of the company upon their return to Chicago, as additional security for the payment of Crawford's notes.

Mr. Jewett testified that some time after his return to Chicago, Mr. Crawford delivered to him the shares of stock, and also the record book of the company, so that he, Jewett, could learn whether all the issued stock of the company had been delivered to him. He found that such was the fact. His best recollection was, that the proceedings of the meeting of March 18 were recorded in the book, on an inspection of the book itself.

His testimony, and the other unquestioned facts in the record, show that the stock and records did not come into his hands until after March 18, and not until the proceedings of the directors' meetings of March 15 and 18, respectively, were therein recorded. (Rec., 557.)

Mr. Jewett appears to have known all about Crawford's relations to the company before he went to New York. He had been the attorney of Messrs. Dull and McCormick from the time they made the contract of sale of the stock to Crawford, in 1880. (Rec., 551.) He had been pressing Crawford for payment of the latter's overdue note for the purchase price. (Rec., 559.)

This is part of his evidence on that subject:

"Q. Did you know at the time the transaction oc-
" curred in New York the relations which Mr. Crawford
" sustained to the company. I mean as to the ownership
" of stock or the control of the corporate affairs of the
" company?

" A. My recollection would be that Mr. Crawford was a
" director of the company, and a contractor for the build-
" ing of the road, and that these bonds had been issued to
" him in pursuance of his construction contract so far as
" they had been actually delivered; beyond that I don't
" think I knew or was advised of the situation.

"Q. Wasn't this about the situation of the matter—
" that Mr. Dull, under your advice, took all the security
" he could get in New York from Mr. Crawford for the
" payment of his note?

"A. That is exactly what I went to New York for, "and it is what I thought my mission there had accom-"plished.

"Q. Now, as to whether these bonds were valid or "not—as to whether Mr. Crawford, under his construc-"tion contract, had a right to the bonds—was a thing you "had not inquired of until you went to New York?

"A. I don't think I ever inquired specially into that "question." (Rec., 556.)

It would appear to be useless to further pursue the inquiry as to whether Dull and McCormick knew, when they took the bonds and stock as collateral security for the past due obligation of Crawford, what his relations to the corporation were, and his control over it.

12. On the 5th of January, 1883, Crawford made an agreement with Drexel, Morgan & Co. for a loan by them to him of the sum of $400,000, of which $250,000 was to be paid by them forthwith, $50,000 when the track of the railroad should be laid continuously from the Iroquois river to Fair Oaks, $50,000 when the track should be laid from Oxford to eight miles south of Oxford, and when Crawford should have furnished to them satisfactory evidence that he had expended upon the road-bed and track of the railroad $50,000 of money in addition to what had already been expended, and in addition to the amounts advanced by Drexel, Morgan & Co. The $50,000 balance of the $400,000 should be paid when the track and road-bed should be completed from Yeddo to Fair Oaks, the advances being at the rate of $5,000 per mile of completed road; that Crawford should execute his notes to Drexel, Morgan & Co. when and as the advances were made to him, and to bear date on the

day of the first advance, and mature in six months thereafter, with interest at the rate of six per cent. per annum, interest to be computed from the day of the advances only; that Crawford should forthwith deposit with Drexel, Morgan & Co., as collateral security for the loan of $400,000, the entire capital stock of the Block Coal Railroad Company, amounting to $800,000, at the par value: [The stock of the Block Coal Railroad Company was only $432,400 par value, 8,648 shares, at $50 per share.] That Drexel, Morgan & Co. should pay out of the $250,000, the first advance, the amount due to Dull and McCormick, not to exceed $130,000, receiving from Dull and McCormick all the stock, franchises, property, *and also an assignment of the contract for the purchase thereof;* that Crawford should also assign to Drexel, Morgan & Co. all the capital stock of the Chicago and Great Southern Railroad Company then issued, amounting at the par to $60,250, and that when, and as, any further amount of stock should be authorized to be issued, that should in like manner be transferred to Drexel, Morgan & Co., as security for Crawford's notes; that Crawford should in like manner deliver to them $1,000,000 of the first mortgage bonds of the Chicago and Great Southern Railroad Company, and should place the remaining $1,000,000 of unissued bonds in the custody of Drexel, Morgan & Co., not to be issued except upon mutual consent, until the whole of the loan of $400,000 should be fully repaid, and that no bond should be issued under the mortgage except the $1,000,000 of issued bonds delivered to Drexel, Morgan & Co. as collateral, until such loan should be paid in full; that Drexel, Morgan & Co. should appoint an agent to superintend the expenditure of all the money to be advanced by them, except the amount to be paid to Dull and McCormick, and the money should only be drawn upon drafts signed by Crawford, approved and countersigned by such agent; that Crawford should, without delay, and at his own expense, effect a consolidation between the Block Coal Railroad Company and the Great Southern Railroad Company, and procure from the consolidated company such further assurances in law as would render the whole line of railway, from Brazil to Fair Oaks, subject to the lien of the first mortgage to New, as the first encumbrance: That Crawford thereby covenanted *that he had control of the Chicago and Great Southern Railroad Company and of the capital stock and of the bonds secured by the mortgage to New, and that upon the payment being made to Dull & McCormick, the whole control of the Block Coal railroad should pass into the hands of Drexel, Morgan & Co.*: That Crawford covenanted and bound himself to obtain and perfect the title to all rights of way and station lots and remove all judgments and liens thereupon other than the lien of the first mortgage to New. Then followed a provision for the sale of the securities deposited with Drexel, Morgan & Co., in case of the default in payment of the notes. (Rec., 902-904.)

From an examination of the above contract of January 5, 1883, it would seem to be conclusively established that Drexel, Morgan & Co. did not make the loan to Crawford upon the security of the bonds alone.

They demanded and took as security, every muniment of title to this railroad property and franchises which an individual can under the law own, viz.: Every issued share of stock and every issued bond. Not only that; they took a guaranty from their debtor that he was in control of the railroad company; not only that, but they bargained with him that they, Drexel, Morgan & Co., should control the $1,000,000 of unissued bonds, and should have every share of stock thereafter issued by the company. Drexel, Morgan & Co., therefore, as a matter of fact, knew, first, that not a director of this corporation had a single share of stock or any stock interest whatever in the corporation, because they, themselves, had every share. Second, that Crawford had absolute control of the corporation. Third, they knew also that when the $1,000,000 of issued bonds were delivered to them with past due interest coupons still remaining attached to the bonds, the same as they were when the bonds were produced on the hearing of this case, that no interest had been paid thereon, the interest coupons falling due July 1, 1882, and January 1, 1883, being overdue and dishonored.

But outside of the contract itself, Drexel, Morgan & Co. had other evidence in their possession at the time they made the loan.

On the 12th of January, 1885, appellant wrote to Drexel Morgan & Co., enclosing drafts to pay the amount of Crawford's indebtedness to them, and in his letter requested them to send to him, with the bonds and stock here in controversy, all papers relating to the road, and orders in reference to the issuing of the bonds, etc. (Rec., 922.)

In their answer to that letter, they stated they had sent with the bonds and stock the papers asked for, and made a schedule of them.

Amongst those named were the two agreements between William Foster and Henry Crawford, dated respectively June 23, 1881, and March 15, 1882. (Rec., 923.)

In the absence of other testimony, it is submitted that it is a fair inference to be drawn, that these two contracts thus in the possession of Drexel, Morgan & Co. (and sent to appellant as purchaser from Crawford, along with the bonds and stock purchased, as part of Crawford's muniments of title) were delivered to Drexel, Morgan & Co. at the time the contract for the loan was made, and when the bonds and stock were pledged with them as security.

There is no other occasion shown by the record, when the delivery of those two contracts to Drexel, Morgan & Co. would naturally have been required, nor when such an occurrence would have been probable.

Upon that presumption, then, Drexel, Morgan & Co. knew, from the contract of June 23d, that Crawford and Foster, on and after that day, were the sole owners of all the issued stock of the company; that the company was under no obligation to issue any stock except for rights-of-way, and that whenever Crawford should request it, the then board of directors would resign. (Rec., 859.)

By the contract of March 15, 1882, they were informed that on that day Crawford became the owner of all the issued stock, and of all stock subscriptions of every kind; and that the then board of directors resigned, and their places were filled with such persons as Crawford designated. (Rec., 861 and 862.)

The knowledge of Drexel, Morgan & Co. of the affairs of the corporation, as to what had been and was being done, whilst the money advanced by them was being expended in the construction of the road, under the supervision of their agent provided for by the contract, was further increased. Crawford testified relative to the period covered by that expenditure as follows:

"Q. Between what dates was that money furnished?
"A. The money was all furnished, I should state "generally, the dates not being here to remind me, be-"tween the 5th day of January, 1883, when the first pay-"ment was made to Mr. Dull of $132,000 and odd dollars, "down until August or September, of that year." (Rec., 644.)

As has been shown, all the bills for material and labor were made out in the name of the railway company, and the indebtedness therefor contracted in its name.

This is what Crawford stated about the method pursued in paying out the money advanced by Drexel, Morgan & Co.:

"Q. How was that money furnished, Mr. Crawford? "I wish you would state a little fully and particularly just "how they furnished the money, for what it was fur-"nished, and for what it was used?
"A. The contract provides that all the moneys up to "the last payment should be furnished exclusively for the "purpose of going into the work. They appointed "originally Mr. Roswell Miller, who was at that time "treasurer of the Chicago and Western Indiana railroad, "as their agent, to superintend the expenditure of the "money, and the method of drawing the money, so that "a voucher for work or material was made out, approved "by either the superintendent or the engineer, whoever "had charge of the work and knew of its correctness. I "then drew a check on Drexel, Morgan & Co., that "had to be countersigned by Mr. Roswell Miller, and "that was handed to the creditor. In other instances, "where it was for work, I had to spend the money "originally and pay for it, and then produce the paid

"vouchers, and a check would be drawn to my order to "repay me for the exact advance. Then the vouchers "were made out in duplicate during this time, and there "was deposited with Mr. Roswell Miller a duplicate "voucher for every expenditure, so as to balance his "check account. That embraces the entire transaction "with Drexel, Morgan & Co. with the exception, possibly, of five payments, the first being a payment made "by Drexel, Morgan & Co., directly to Mr. Dull on the "5th of January; the others being checks which I drew "to pay Mr. Roswell Miller, first for his services in this "matter, and afterwards two checks for $500 each to "Mr. A. S. Dunham, who was his successor as the representative of Drexel, Morgan & Co. When Mr. "Roswell Miller moved to Milwaukee, Drexel, Morgan & "Co. appointed Mr. A. S. Dunham to supervise the expenditure of money." (Rec., 644.)

It is clear, therefore, that Drexel, Morgan & Co., through their agents, first Roswell Miller, and next A. S. Dunham, knew that the indebtedness was being contracted in the name of the corporation as the debtor. Of the five appellees, the indebtedness due to three of them was contracted, in part, during the period—from January 5th to August or September, 1883—when Drexel, Morgan & Co. were advancing moneys for the construction, as follows: Volney Q. Irwin commenced work under his contract on November 1, 1881, and completed it on September 12, 1883. (Rec., 788.)

Crerar, Adams & Co. began furnishing materials on January 12, 1883, and continued so to do until October 25, 1884. (Rec., 91–95.)

A large part of the indebtedness due the Smith Bridge

Company was incurred after January 5th, and prior to September, 1883. (Rec., 819–823.)

13. On the 29th of June, 1882, the board of directors of the company, (its name having been changed to that of the "Chicago and Great Southern Railway Company,") met at Chicago, Illinois, and passed a resolution authorizing the consolidation of the company with the Chicago and Block Coal Railroad Company. The proceedings of the meeting are not set forth in the record at length, and the date is June 29, 188*3*, which evidently is a mistake in the year, because the meeting of the stockholders, which is mentioned immediately after, is stated to have been held March 10, 1883, at which meeting of stockholders the above mentioned resolution by the board of directors for consolidation were ratified. (Rec., 890, top page.)

By the agreement for consolidation it was provided that the capital stock should be $3,000,000, divided into 30,000 shares of $100 each.

By article 4, the stockholders of the two companies were to be entitled to the same amount of stock in the consolidated company held by them in either of the original corporations; and the latter stock should be retired and canceled, and on the surrender of the certificates representing the same, there should be issued to the party surrendering, a certificate for a like amount of shares in the stock of the consolidated corporation.

By article 6 it was provided "that all and singular the "debts, contracts and engagements" of either company should be assumed and become the debts, contracts and engagements of the consolidated corporation; and the mortgage of the Chicago and Great Southern Railway

Company to John C. New, as trustee, dated November 1, 1881, was assumed by the consolidated company and declared to be the first lien upon the railroad of the consolidated company, together with all lands, property and franchises, etc. The name of the consolidated company was to be the Chicago and Great Southern Railway Company. (Rec., 168 and 169.)

On the 18th day of April, 1883, the supplemental mortgage or deed of trust by the consolidated corporation was signed and acknowledged by the officers of the company. By it the consolidated corporation undertook to further assure the lien and priority of the original mortgage of November 1st by the Chicago and Great Southern Railway Company. (Rec., 755 and 759.)

14. On the 18th of February, 1884, the records of the company, in Crawford's own handwriting, show that five of the directors, including E. Moore, Jr., assembled in pursuance of notice. That Crawford (who had been president and director of the company since May 7, 1883) being absent, G. W. McDonald presided. That the secretary presented a communication from Crawford, as contractor, relative to the construction that had been done by him.

In his communication to the company, which was read and spread upon the minutes of the meeting, he stated: "Although by the contract iron rails at fifty-two pounds "per lineal yard were to be used, I have used mostly steel "rails, weighing from fifty-six to sixty pounds."

The contract provided that the road was to be ironed with "either iron or steel rails, to be not less than fifty-"two pounds to the lineal yard," and Mr. Kimball, the receiver, testified that he should say that one-fourth of the road was laid with steel rails, and that there was no extra work on the road. (Rec., 525.)

In consideration of the situation, Crawford requested the company to direct the secretary to endorse an extension of the contract up to June 1st, 1885, and deliver him, in addition to the $1,000,000 of first mortgage bonds, $200,000 of first mortgage bonds, $1,200,000 of income bonds, and $1,200,000 of stock, "the same to be a payment on account to me." The resolution passed, recites that the time for completing the line of road to Brazil should be extended to June 1, 1885, and the secretary was instructed to properly endorse such agreement of extension of the construction contract, and to sign the same in behalf of the company. It was also resolved that as a payment on account for the work done and materials furnished up to that time, under the contract, there should be allowed and paid to the contractor, or order, the sum of $200,000 of first mortgage boods, in addition to the $1,000,000 of bonds theretofore appropriated, and also $1,200,000 of income bonds and $1,200,000 in the common stock, full paid, of the company. The proper officers of the company were directed to execute the foregoing resolution and take proper vouchers for all payments. (Rec., 895, 896.)

Mr. McDonald, who presided as president *pro tem.* of the meeting, testified that they needed Director-Lyon to make a quorum, but that Lyon was a justice of the peace, and when they went to have him attend the meeting, he stated that he did not wish to act as director, and going back to the office, they found E. Moore, Jr., and elected Moore director. Although the record book shows that Moore was elected a director on the 11th of August, 1883, yet that was made to appear by an erasure of the name of some one, and inserting Moore's name; that Moore had never been director prior to this meeting of February 18, 1884: (Rec., 282-284.) That the letter of Crawford to the directors was not read, but was held up to their view, and the motion was made which is recited in the minutes. That the resolutions of the meeting were previously prepared by Crawford and handed to McDonald by him, to have passed at the meeting: That there was no discussion as to whether the company should extend the time for the completion of the contract, nor as to whether the additional first mortgage bonds and the income bonds and capital stock should be issued or not. The only discussion that was had was, as to whether, in Crawford's letter of instruction containing the resolution, a certain figure was a "2" or a "3." That the only consideration in voting the matter was that Crawford desired it. It was under and in pursuance of that resolution, thus passed by that board of directors, thus constituted, and the meeting thus held, and none other, that the $1,200,000 of capital stock were issued and the additional $200,000 of first mortgage bonds. (Rec., 285, 286.)

Although the resolution thus passed, on February 18th, was the first authority for issuing the $1,200,000 of stock coming from the board of directors, yet it would appear that Crawford, as president, and Lacy as secretary, had, in the preceding month, issued the entire $1,200,000 of stock to Henry Crawford under date of January 26, 1884. Such appeared to be the facts on the hearing before the master, when the stock was produced. (Rec., 334, 335.)

The disposition made of that stock and the additional $200,000 of first mortgage bonds will be shown further on.

15. On the 25th of June, 1884, Crawford's note to Drexel, Morgan & Co. for $350,000, which they had advanced, with the accrued interest, having become due and extended, Crawford in one contract with Drexel, Morgan & Co., and Porter and Nickerson in another contract with the latter, substantially agreed, that, in case Crawford's indebtedness to Drexel, Morgan & Co. should remain unpaid at the end of sixty days from June 20, 1884, the latter should sell all the securities held by them as collateral to Crawford's note, and Porter and Nickerson agreed that they would purchase the same in such event, provided certain additional stock and bonds should have been deposited with Drexel, Morgan & Co. by Crawford, and pay therefor the amount of Crawford's indebtedness and interest on or before the 15th day of January, 1885. (Rec., 906-908.)

The contracts, however, have some peculiar provisions to which it is desired to call attention.

In the Crawford-contract it was recited, that he had requested Drexel, Morgan & Co. to accept the offer of Nickerson and Porter for the purchase of the securities, the proposition of the latter having been made conditional upon the delivery of the additional stock and bonds of the railroad company; and thereupon Crawford agreed that he would procure or cause to be issued all the shares of the capital stock of the railroad company which might lawfully be issued either in lieu of the shares of the Indiana and Chicago Railway Company, and the shares of stock of the Chicago and Block Coal Company then held by Drexel Morgan & Co. as collateral, "*or for other purposes*," amounting at the par value thereof "*to at least $1.200,000:*" That Crawford should also procure to be issued, of the remainder of the first mortgage bonds, all that could lawfully be issued, and transfer them to Drexel, Morgan & Co., and would also transfer to them said $1,000,000 of first mortgage bonds and all the shares, whether issued in lieu of shares then held by Drexel, Morgan & Co. "*or for other purposes:*" The same were to be held by Drexel, Morgan & Co. as collateral security to Crawford's indebtedness, subject to the same power of sale as the collaterals originally pledged: That if Crawford's indebtedness should not be paid within sixty days from the 20th of June, 1884, Drexel, Morgan & Co. might sell and deliver the securities to Nickerson and Porter for an amount equal to Crawford's indebtedness, without further notice to him, all of which Drexel, Morgan & Co. agreed to.

In the agreement of Porter and Nickerson, it is provided that on condition that Drexel, Morgan & Co. sell and deliver to Nickerson and Porter all the bonds and shares held by them as collateral security to Crawford's indebtedness at the end of sixty days from June 20, 1884, and that *Crawford should procure to be issued* and placed with Drexel, Morgan & Co., subject to the power of sale then held by them, *in addition to the* $1,000,000 of bonds then held by Drexel, Morgan & Co., all the first mortgage bonds that could lawfully be issued under the first mortgage of the railroad company, and should procure to be delivered and issued to Drexel, Morgan & Co. all the shares of stock of the Great Southern company that could lawfully be issued, "*amounting at least to $1,200,000;*" that then Porter and Nickerson agreed to purchase the securities as above mentioned, and pay Drexel, Morgan & Co. in cash therefor the amount of Crawford's indebtedness, with interest and expenses on or before the 15th of January, 1885.

Porter testified that he entered into the contract with Drexel, Morgan & Co. for the purpose of giving Crawford a chance to redeem the bonds: That if he, Crawford, did not do it, that he (Porter) and Nickerson would take them off their hands. (Rec., 450.)

In the schedule of securities covered by the agreement between Drexel, Morgan & Co. and Porter and Nickerson, and which, at that time, were in the hands of Drexel, Morgan & Co., it is recited that on the delivery to Drexel, Morgan & Co. of $492,450 in the stock of the Chicago and Block Coal Railroad Company and the Chicago and Great Southern Railway (being a part of the $1,200,000 of stock in the agreement mentioned), that Drexel, Morgan & Co. should surrender to Crawford the 8,648 shares of Block Coal railroad stock and 1,201 shares of the Chicago and Indiana railway stock. (Rec., 908, bottom page.) The shares of the Chicago and Block Coal Railway Company were of the par value of fifty dollars per share, and amounted to $432,400.

In the letter of Drexel, Morgan & Co. to Crawford of May 9, 1884, notifying him that unless he paid his notes they would sell the securities, they describe the Block Coal stock as 8,648 shares of fifty dollars each, amounting to $432,400. (Rec., 906, top page.) The 1,201 shares of the Chicago and Indiana Railroad Company at fifty dollars a share amounted to $60,050, making a total of $492,450. In the printed copy of this list of securities the amount is stated at $492,750, but the figure "seven" should be a "four," and the amount should be "$492,450." The schedule itself says that the stock would be issued in lieu of the Chicago and Block Coal Railroad Company stock and the Chicago and Indiana railway stock to the amount of $492,450, as *part* of the $1,200,000 of stock, specified in the agreement to be delivered to Drexel, Morgan & Co.

The resolution of the board of directors of the 14th of February, 1884, provided that the $1,200,000 of stock should be issued to Crawford in pursuance of the terms of his construction contract.

That $1,200,000 of stock of the Chicago and Great Southern Railway Company was issued under the date of January 26th, 1884. (*Ante.*)

As if not satisfied, first, with having issued the stock on the 26th of January, 1884, *without any authority*, and next with the authority given by the board of directors on the 18th of February, 1884, another meeting of the board of directors was held on May 5th, 1884, with Crawford himself this time presiding as president. At that meeting it was resolved that, upon the surrender by the contractor of all the outstanding stock certificates issued by the Indiana and Chicago Railway Company and the Block Coal railway company, the secretary should issue and deliver certificates of stock in the consolidated company for a like amount as represented by such surrendered certificates. "Resolved further, *that in addition to the new "stock to be issued in exchange for the stock of the original "companies, the secretary shall also issue and deliver to the "contractor additional new stock as payment under the construction contract, so as to make total of $1,200,000 par "value, of all stock outstanding.*" (Rec., 897.)

Referring again to the schedule of securities on page 906: by taking the amount of $492,450, which represented the par value of the stock of the Indiana and Chicago railway and Block Coal companies, and deducting that from the amount of $1,200,000 of actual stock issued, and the difference will show the amount which was issued under Crawford's construction contract, and that difference amounts to $707,550 of stock that was issued under the construction contract. Crawford testified that such balance of stock was issued under the resolutions of the directors of February 18, 1884. (Rec., 647, 648.)

16. On the 12th of August, 1884, Drexel, Morgan & Co. wrote to Lacy, as secretary, "That as Crawford had "delivered to them the $1,200,000 of the stock of the "Chicago and Great Southern Railroad Company, issued "in accordance with the articles of consolidation, and under resolution of your board of directors, dated May "5th, 1884," they therewith surrendered 8,648 shares of the Block Coal company stock and asked Lacy to acknowledge receipt.

On the next day, August 13, 1884, they wrote another letter to Lacy, that they were sending him 1,201 shares of the Chicago and Indiana Railway Company stock. "This surrender complies with the requirements of your "board of directors as per your resolution of May 5th, "1884." (Rec., 909.)

On the same day they wrote to Nickerson and Porter, referring to the agreement between them, with the information that they (Drexel, Morgan & Co.) had surrendered to the Chicago and Great Southern Railway Company the shares of the Block Coal and the Indiana and Chicago company, which they previously held, and that Crawford had delivered to them 12,000 shares of the stock of the Chicago and Great Southern Railway Company, and also $200,000 of bonds of the same company, in addition to the $1,000,000 of bonds which they already held. "These securities constituting those specified as "requisite for the agreement we made to become oper- "ative, and as they are now in our possession, said agree- "ment does accordingly become operative, and which "please note and confirm." (Rec., 910.)

On the 19th of August, Drexel, Morgan & Co. wrote to Nickerson, replying to his letter of the 15th, and stated that the $200,000 of bonds and the $1,200,000 of stock were the amounts of the bonds and stock which under the resolution they were authorized to receive. (Rec., 910.)

From the letter of Nickerson and Porter, of August 22d (Rec., 910), it would appear that their understanding of the agreement of June 25th was that Crawford was to procure all the additional bonds of the $1,000,000 unissued, to be issued, so far as could lawfully be done, and was to place them, and what remained unissued with Drexel, Morgan & Co. for Porter and Nickerson.

In that view of the contract, they appear to have been correct.

But Drexel, Morgan & Co. satisfied them on that point by their letter of August 27th, wherein they stated that the $800,000 of unissued bonds were in a certain bank, subject to the call and control of Drexel, Morgan & Co., and could not be issued without their consent. (Rec., 911.)

17. The knowledge which the appellant and his associate, Mr. Nickerson, had of the affairs of the corporation, its indebtedness and property, and Mr. Crawford's relations to and control over it, on June 25th, when they

made the contract of that date, was as extensive as must necessarily have come to men placed in such relations as they had borne towards Crawford and his enterprise.

Nickerson was president, director and a large stockholder of the First National Bank of Chicago. Appellant was a director, as well as a large stockholder. (Rec., 419.)

Crawford had owed the bank a very large sum of money for a long time. The securities which he had pledged as collateral to the original loans had become inadequate.

As was claimed on behalf of the bank at the hearing, Crawford had given to it a second lien on the securities pledged with Drexel, Morgan & Co., or rather a written order to Drexel, Morgan & Co., that when Crawford's debt to them should be paid the securities should be delivered to the bank. (Rec., 410.)

Many months before June, 1884, Mr. Nickerson knew that Crawford was building the road, having been consulted incidentally about it by Crawford when the latter undertook the enterprise. (Rec., 405.)

Before making the contract of June 25th, Nickerson had seen Crawford's construction contract. (Rec., 411.)

Appellant had himself, during the winter preceding the June 25th contract, gone over the road at Crawford's invitation, to examine the property, with a view to taking an interest in it. (Rec., 444, 445.) At that time appellant understood that the road was practically Crawford's; that he controlled it, and was furnishing money and building the road. (Rec., 446, 466.)

Appellant did not, at that time, become interested in the property; but his examination of, and negotiations concerning it, coming to the ears of creditors of the company, they began calling upon him to learn what their chances might be to receive payment of their claims.

Mr. McMillan, as attorney for the Cleveland Rolling Mill Company, appellee, called upon appellant about May 19, 1884, to learn whether he was about to buy the road, and what provision would be made for the payment of that claim; appellant was not sure what he would do in regard to buying the road, but assured Mr. McMillan that if he did, a trustee should be appointed to receive the purchase money, and with whom should be filed the claims of creditors, who would be paid before Henry Crawford should get a cent.

Appellant further assured McMillan that if he took an interest in the enterprise, he would carry out the idea of seeing that the creditors were paid. (Rec., 354.) Appellant gave in substance the same assurances to Mr. Charles L. Allen, whose firm—Dexter, Herrick & Allen—represented other creditors. (Rec., 331, 332.)

18. Crawford testified that from August 20, 1884, when appellant and Nickerson became liable to pay his (Crawford's) notes to Drexel, Morgan & Co. under the contracts of June 25th, down to October 27th of that year, when the receiver was appointed, he (Crawford) was still endeavoring to make arrangements to sell the securities and relieve appellant and Nickerson from their liability; and that the latter still continued to urge him (Crawford) to make some other arrangements, by which they would be released from their obligations to Drexel, Morgan & Co. down to December. (Rec., 689.)

By the 27th of October, however, Crawford had ceased all efforts to that end. He thereupon caused proceedings to be begun in the state court for the appointment of a receiver for the railway. (Rec., 568.)

Nickerson's evidence was to the effect that negotiations were begun by himself and appellant with Crawford immediately after August 20, 1884, to arrange definitely about the securities and property. (Rec., 409.)

19. Between one of the above mentioned dates and the 26th of December, what is called in the record the "Syndicate Agreement" was negotiated between Crawford, on the one hand, and appellant and Nickerson on the other.

The situation was as follows:

Whilst, as between appellant and Nickerson, and Drexel, Morgan & Co., the former had become bound to pay to the latter by January 15, 1885, the amount of Crawford's indebtedness, and the latter to deliver to them all the securities representing the railway and property, yet, as between appellant and Nickerson and Crawford, such securities would be in the possession of the former, subject to Crawford's right to redeem them by paying his debt.

It is evident, from certain facts in the record, that before, and at the time of the appointment of the receiver, there was much less harmony between the three, than a year later, when they were on the witness stand. Crawford had procured the state court to appoint a receiver for the railway in a proceeding to which neither appellant, Nickerson or the trustee in the mortgage were parties.

He took care to have himself made a party, as contractor in possession of the property.

The proceedings were begun and, so far as the appointment of the receiver was concerned, consummated, without the knowledge of either appellant or Nickerson, although they learned of it soon after, and before December 26th. (Rec., 409 and 489.)

Crawford also owned the stock of a corporation called the Union Coal Company, which had some leases of coal lands near the line of the road, and a coal shaft opened, worth less than $40,000.

Crawford owed the First National Bank, of which Nickerson was president, nearly three hundred thousand dollars, for which it had securities worth, on December 26, 1884, from about $116,000 according to Mr. Gage, the vice president, (Rec., 535), to $150,000 according to Mr. Nickerson. (Rec., 421.)

The bank, as before mentioned, also held an order, (given before June 25, 1884), from Crawford, on Drexel, Morgan & Co., directing the latter on being paid the amount of Crawford's debt to them, to deliver his securities to the bank.

20. In that position of affairs, an entirely new arrangement was agreed to by the parties, which Mr. Nickerson, in his testimony, called "this new deal." (Rec., 414.)

That arrangement was briefly this:

Appellant, having procured a number of persons to join him, forming what was called the "syndicate," agreed on its behalf with Crawford, to pay the latter $500,000 in cash for two-thirds of the bonds and stock (then in the hands of Drexel, Morgan & Co., and representing the railway property), and all the Union Coal Company stock, with the option, on the part of the syndicate, to acquire the other third by paying the additional amount of $250,000, or a total purchase price of $750,000. (Rec., 415.)

The syndicate, out of the purchase price, was to pay:

First. Crawford's indebtedness to Drexel, Morgan & Co., and procure his notes therefor to be canceled and surrendered to him.

Second. All debts of the railway company, which should be decreed to be liens prior to the mortgage on the foreclosure proceeding contemplated by the contract; or which should be decided by the court to be equitably payable out of the sale-proceeds of the railway prior to the mortgage, under such foreclosure proceedings; and all indebtedness incurred by the receiver, before January 15, 1885, and not paid out of the earnings made before that time.

Third. The indebtedness of the Union Coal Company, not exceeding $1,500.

Fourth. The balance to Henry Crawford or his assigns.

Crawford was to procure all the bonds and stock of the railway company ($1,200,000 of bonds and $1,200,000 of stock), and the stock of the coal company to be delivered to appellant.

He was to procure his construction contract to be canceled and release the railway company from any liability thereunder, to issue to himself any income bonds, or for any other rights or claims that had accrued to him by virtue of such contract.

There were various other guarantees on the part of Crawford, inserted in the contract, when it came to be written out.

One was that the $1,200,000 of capital stock was "full " paid and was non-assessable."

Another was that the debts of the railway company, which should be held prior in right of payment to the $1,200,000 of bonds and coupons should not exceed $100,000, and that if they should exceed that sum he would pay the syndicate the excess with interest, and that the latter might, at their option, take such excess out of the one-third interest in the securities retained by Crawford.

It was further agreed that this arrangement and contract should supersede, and be a substitute for all written or verbal agreements inconsistent with such contract and respecting the subject-matter, theretofore entered into between Crawford and appellant and Nickerson. (See syndicate agreement, Rec., 911–915.)

21. It was then agreed between Crawford and the bank that he should assign to the bank as collateral security for his indebtedness to it, all his interest in the syndicate agreement, and all moneys or securities which should accrue or be coming to him by virtue thereof; and that in consideration of the same, the bank should surrender to him the securities it then held of the market value --as shown *ante*—from $116,000 to $150,000. (Rec., 915-917.)

22. Those contracts having been entered into, the appellant, under date of January 2, 1885, caused to be prepared an agreement between the members of the syndicate.

That refers to the former agreement of December 26th, between Crawford, and appellant for the syndicate, and makes appellant their agent to procure the foreclosure of the mortgage, bid off the property and organize a corporation to which the property bid off at the foreclosure sale should be conveyed. It is, in effect, a subscription agreement, with various provisions not material here. (Rec., 918, 920.)

23. On January 12, 1885, appellant, having collected from Mr. Nickerson, as a member of the syndicate, $150,000, the amount of his subscription thereto, and from another member $15,000, sent the amount of Crawford's indebtedness ($392,363.24) in drafts to Drexel, Morgan & Co., and requested them to send the securities held by them to him (appellant), under the contract of June 25th.

He further informed them that Mr. Nickerson's interest had been purchased by him, appellant.

He also requested them to send Crawford's notes "*canceled*," and an order on the Union National Bank of Chicago for the $800,000 of unissued bonds of the railway company; also, all papers relating to the road, abstracts of title, etc., and any other information retained by them. (Rec., 921, 922.)

Drexel, Morgan & Co. accordingly, on January 14th, remitted to appellant the $1,200,000 of bonds, the order for the other $800,000, $1,200,000 of capital stock, Crawford's notes canceled, and various agreements and copies of resolutions of the directors of the railway company, etc. (Rec., 922, 923.)

That $1,200,000 of issued bonds comprised the $1,000,000 delivered by Foster to Starin for Crawford in December, 1881; and the $200,000 authorized to be issued by the directors February 18, 1884, under Crawford's construction contract. The $1,200,000 of capital stock, was the same, which Crawford, as president, had issued to himself January 26, 1884, without any authority, and which the directors authorized at their meeting of February 18, 1884, to be issued under the construction contract, and again had authorized to be issued at their meeting of May 5, 1884—$492,450, in lieu of an equal amount of the stock of the Indiana and Chicago and Block Coal railroad companies—and $707,550 under Crawford's construction contract.

On January 15 Crawford indorsed on the syndicate contract the following:

"I hereby acknowledge that H. H. Porter has this day " *paid for my account under this contract* three hundred " and ninety-two thousand three hundred and sixty-three " dollars and twenty-four cents ($392,363.24), by pay- " ment of my indebtedness to Drexel, Morgan & Co., to " that amount." (Rec., 915.) On the next day he indorsed on his agreement of assignment of the syndicate contract to the First National Bank his receipt of the securities that were therein agreed to be surrendered to him. (Rec., 917.)

24. The $1,200,000 of capital stock was all voted at the next stockholders' meeting of the company, held on April 6, 1885, for a board of directors designated by the appellant, and not one of which directors was the owner of a share of stock or had any interest in the corporation, any more than their predecessors since June 23, 1881. (Rec., 898-900, 386-389, 337-342, 389-395, 519-522.)

25. The original Indiana and Chicago Railway Company was insolvent when Crawford obtained the $1,000,-

000 of its bonds in the latter part of December, 1881, if Crawford's own prior advances constituted an indebtedness against the corporation. (Rec., 495, 496, 650.)

That condition continued to the end.

When the Chicago and Block Coal Company was consolidated with the former company, and its property became bound by the mortgage, the consolidated company was also insolvent if Crawford's advances constituted a debt against the consolidated company.

26. With reference to the knowledge which these appellees respectively had of the pledge of the bonds with Drexel, Morgan & Co., Crawford's construction contract, the issue of the stock and bonds thereunder, it is here asserted with confidence (that will be borne out by the record when the separate claims of the appellees shall be hereinafter considered in connection with the reply to the briefs and arguments for appellant) that not one of the appellees had at any time before the appointment of the receiver, any such knowledge of the facts, as claimed on behalf of appellant, or such as should preclude either appellee from contesting the validity of those transactions.

27. The history of the litigation, as shown by the pleadings, orders and decrees of court, and reports of the master, have been set forth at much length in the brief and argument, which will be filed in support of the motions by appellees to dismiss the appeals.

Mr. Butler, in his brief and argument for appellant, states that, "Proper pleadings were filed and issues "joined." (Page 26.)

Sufficient appears, that the state court, at the instance of creditors of this insolvent railway company had appointed a receiver for it, and taken possession of its property, before appellant filed his bill in this case to foreclose the mortgages.

The subsequent proceedings by which the creditors' suit, with the receivership, was transferred to the Circuit court, and consolidated with appellant's bill for foreclosure, do not change the legal effect of the proceeding, which was: That whilst a court of equity was engaged in administering the property of an insolvent corporation in its custody, at the instance of, and for the benefit of creditors, appellant intervened in that proceeding and claimed a first lien on all the property, as against all creditors, by virtue of mortgages securing his $1,200,000 of bonds.

28. The result of the litigation, which ensued, was a final adjudication between those creditors and himself that their claims for labor done and materials used in the construction of the railway, prior to the appointment of the receiver, were superior in lien to the lien of appellant's mortgages. By the application of appellant himself, a sale was procured and made in satisfaction of both liens, by which the title to the property passed to the purchaser freed from all liens. Appellant became the purchaser and has received title to and possession of the property.

BRIEF AND ARGUMENT.

I.

THE PRIORITY OF LIEN IN FAVOR OF APPELLEES' CLAIMS UPON THE RAILWAY PROPERTY HAVING BEEN ESTABLISHED BY THE DECREE FOR FORECLOSURE AND SALE OF FEBRUARY 16, 1886, AS AMENDED BY THE SUPPLEMENTAL DECREE OF MARCH 2, 1886, THE CIRCUIT COURT DID NOT ERR IN DECREEING THE PAYMENT OF THE SAME OUT OF THE PROCEEDS OF SALE IN THE SAME ORDER OF PRIORITY.

These appellees became parties to the suit at the following times:

1. Irwin was a defendant to the original bill.

2. The Cleveland Rolling Mill Company filed an answer on June 24, 1885. (Rec., 42.)

3. The Pittsburgh Bessemer Steel Company filed its intervening petition on August 11, 1885. (Rec., 71.)

4. Crerar, Adams & Co. filed an intervening petition October 2, 1885. (Rec., 90.)

5. The Smith Bridge Company filed its intervening petition April 18, 1885. (Rec., 24.) This petition was never withdrawn, and an amended petition was filed December 29, 1885. (Rec., 131.)

On February 16, 1886, a decree was entered foreclosing the mortgages and ordering a sale of the property.

By the sixth paragraph thereof it was adjudged "that "the unpaid valid claims against said railway company, "accruing for right of way, lands, *labor*, rolling stock and "*materials* used in the construction and betterment of said "railway, whether reduced to judgment or remaining in "open account, are hereby adjudged and decreed to be "prior, superior and paramount to the lien of the said "mortgages or deeds of trust and bonds secured thereby." Rec., 131.)

By the ninth paragraph a reference was ordered to the master to take testimony and report, among other things, "before or at the day of confirmation of the sale made "hereunder, the amount due the several claimants under "the sixth paragraph of this decree, showing the amount "due each claimant." (Rec., 133.)

Appellant excepted to the foregoing part of the sixth paragraph, and prayed an appeal, which was granted on giving bond to the satisfaction of the court. (Rec., 134.) No bond was given.

Afterwards, on the 27th day of March, 1886, the master filed his report, showing that a certified copy of said decree came to his hands on the 22d day of February, 1886, and that he, on said March 27th, had sold the property to the appellant. (Rec., 147.)

On April 5, 1886, appellant, not waiting for the master's report on the claims, filed his petition, asking that the sale be confirmed. In this petition appellant recited that an amendment had been made to the decree on March 2, 1886, requiring all persons to present and file with the master their claims prior to the day of sale or be forever barred, and that the purchaser, under the decree, should take the property free and discharged of all liens and claims, including the two classes of claims mentioned in the sixth paragraph. (Rec., 150.)

This amendment being omitted from the record, the clerk has sent a certified copy thereof to the solicitors of the respective parties, and Mr. Butler has incorporated it in his brief at page 31.

The sale was confirmed at once, and the master was directed to execute a deed to the appellant, and the receiver was directed to place the appellant in possession of the property upon payment of the purchase money. In this same petition appellant stated that he was then the owner of receiver's certificates mentioned in the decree, amounting in the aggregate to $157,884.64, and asked that the same might be received as cash, which was accordingly allowed, and he paid the remainder of the purchase money into the registry of the court.

All these proceedings were had at the November term, 1885, of the Circuit court.

Appellees insist that upon the rendition of the decree on February 16, 1886, appellant had the right of election to decline to accept it as rendered, or to accept it and proceed with its enforcement. He chose to pursue the latter course, and caused the property to be sold, purchased it, took title and possession, paying the purchase money and receiving back a part thereof by way of the receiver's certificates. In short, he voluntarily elected to abandon all further controversy over the right of priority between himself and these appellees, as established by the sixth paragraph of the decree. Perhaps he was moved to this course of conduct because he thought that to acquire the immediate possession of the property was of greater advantage to him than to pursue the litigation with these appellees. Another consideration, no doubt, was that he thereby acquired the property in pursuance of the expressed purpose and fulfillment of the "syndicate agreement," and left the controversy over the amount of these claims to be determined between the claimants on the one hand, and Mr. Crawford and his assignee, the First National Bank of Chicago, on the other, in accordance with the provisions of said contract. (Rec., 911 *et seq.*)

Whatever may have been the motive or purpose, the effect and result of this action works a conclusive estoppel against him to further question the conclusiveness of the decree on the question of priority of liens. "One "who accepts the benefit of a judgment will not there-"after be permitted to assign error upon it."

Bigelow on Estoppel, 588.

Again, appeals are allowed to this court from final decrees only. (R. S. U. S., Sec. 692.)

Appellees insist that the decree of February 16, 1886, with the amendment of March 22d, and the order of confirmation thereof of April 5th, constitute a final decree within the meaning of the statute as construed by this Court; and that the same cannot now be reviewed on another appeal from an order made at a subsequent term in pursuance and execution thereof, in making distribution of the funds arising from the sale.

Appellant did not wait the master's report on the claims, but procured the sale to be made as speedily as possible. That report was not brought in until August 31, 1886. (Rec., 70 *et seq.*)

Appellant filed exceptions on September 28, 1886 (Rec., 181), and on October 8, 1886. (Rec., 185.)

On the next day his exceptions were overruled, and payment was ordered to be made out of the funds in the registry of the court, as follows:

To the Smith Bridge Company	$23,345.54
To the Cleveland Rolling Mill Company	33,112.32
To Crerar, Adams & Co	8,723.71
To the Pittsburgh Bessemer Steel Company	14,458.55
To Volney Q. Irwin	12,789.98

From these orders of distribution appellant brought these appeals (Rec., 192, *et seq.*), and seeks thereby to review the rights of priority as established by the sixth paragraph of the decree of February 16, 1886. No question is made as to the amounts.

The rights of these appellees in the property of the railroad and proceeds arising from the sale were adjudicated by the terms of the decree directing the sale of the property. The only question remaining was to ascertain the amounts, and for that purpose the claims were referred to the master. The amounts are not questioned. By procuring a sale, confirmation, title and possession before the report was in, appellant waived or abandoned all further exception to the claim.

The decree was final.

Mills v. *Hoag*, 7 Paige Chy., 18 (approved in *Beber* v. *Russell*, 19 How., 285).
Ray v. *Law*, 3 Cranch, 179.
Forgay v. *Conrad*, 6 How., 210.
Thompson v. *Dean*, 7 Wall., 742.
Railroad Co. v. *Bradley*, 7 Wall., 575.
Green v. *Fisk*, 103 U. S., 518.
Grant v. *Ins. Co.*, 106 U. S., 429.

Bostwick v. *Brinkerhoff*, 106 U. S., 3.
Railroad Co. v. *Express Co.*, 108 U. S., 24.
Winthrop Iron Co. v. *Meeker*, 109 U. S., 180.

One of the questions which arises in the consideration of this matter is:

In distributing the proceeds of sale of property, sold under a decree of an equity court to satisfy liens adjudged by such decree, must the order of distribution follow such former decree? It would seem that the statement of the question involves its necessary answer.

This Court, in stating the reasons why, in foreclosure suits, a decree which settles all rights of the parties, and leaves nothing to be done but to make a sale and pay over the proceeds, is a final decree, said: "The reason is that, in "such a case, *the sale is the execution of the decree of the "court, and simply enforces the rights of the parties as "finally adjudicated.*"

Green v. *Fisk*, 103 U. S. (13 Otto) 520.

[The italics in this brief are our own.]

If this is not true, then, it is suggested, that in an ordinary case of foreclosure of a railway mortgage, where the trustee in the mortgage is complainant, and the court decrees that the mortgage is a first lien as security for all outstanding bonds, and orders foreclosure of sale, no reason is seen why the same defense, set up against the trustee, could not be made by the mortgagor-corporation against every bondholder who should claim his distributive share of the proceeds of sale.

This difficulty would also present itself: By the decree for foreclosure and sale, the court fixed the character which the respective claims of creditors must have in order to receive the benefit of the lien. It referred those claims to the master to take proof and report upon that question as to every claim, viz: Whether it was incurred in the construction, betterment or operation of the railway prior to the appointment of a receiver, and to what amount? The master and all the parties were, by well settled rules of equity procedure, confined to those questions. But when that evidence, on those issues, should be reported by the master with his findings, the court must decide again the question of priority of lien, upon issues not referred, and on evidence which it had, by its order of reference, precluded the parties from going into before the master.

Appellant, after the sale and confirmation and possession by himself of the property, sought to again raise the issue with appellees over that question of priority.

On June 4, 1886, he applied to the Court for leave to file separate answers to the claims of appellees, denying their priority of lien, and which application was by the Court denied. (Rec., 154-170.)

If the Circuit court was required to distribute the proceeds of sale according to the priorities of lien on the property sold, as fixed by its decree for foreclosure and sale, then in reviewing its decree of distribution, it could not be contended that this Court should reverse that decree, because the former decree was wrong, although the Circuit court had rightfully followed it in the order of distribution.

Another strange legal anomaly would be presented if this Court is now required by legal rules to review the former decree.

By the execution of that decree, the mortgage upon the railway property was satisfied, and the *mortgage*, in legal effect, canceled.

Yet, if our adversaries are correct, the mortgagee may turn about and successfully claim an interest in the proceeds of the property by virtue of his mortgage, after its lien has been satisfied, greater than was adjudged to it in the very decree by whose execution it was in effect canceled.

In other words, the mortgage by the process of its extinction, comes to represent a greater interest than when in full vitality.

Let it be supposed that the decree of February 16 did not have the effect to authorize a foreclosure of the creditors' lien and sale of the property freed from that lien, just as appellant and his counsel seem to have feared when they applied and procured the supplemental decree of March 2; that a sale had been made foreclosing only the lien of the mortgage, and title had passed to the purchaser, subject to the lien declared by the sixth paragraph of the original decree in favor of claims of the character therein designated, and that subsequently the claims were all adjudged and ordered to be paid, in accordance with that paragraph, and the purchaser decreed to pay them: The appellant would then have been precluded, as complainant and bondholder, from contesting the payment of those claims, upon the principle declared by the Court in *Farmers' Loan and Trust Company* v. *Waterman*, 106 U. S. (16 Otto), 265.

When the logic, which underlies that principle, is sought for, it is submitted that it will be found to necessarily involve the proposition that a mortgagee procuring a sale under a decree for foreclosure, fixing the extent and priority of his mortgage lien, in and upon the property foreclosed and sold, becomes thereby entitled to that precise interest and priority in the proceeds of sale of that property—no less and no more.

In the case above supposed, where appellant, not as *complainant* and *bondholder*, but as *purchaser*, should desire to contest the amount of the creditors' liens, he certainly could have no greater or different rights than would belong to a mere stranger, who had become the purchaser.

Then the question arises: Could a purchaser, who had bought the property, expressly subject to the liens of creditors, whose claims against the railway company were incurred before the appointment of the receiver, in the construction, betterment or operation of its road, as such claims should thereafter be adjudged, attack the binding force of that decree? Such purchaser could contest each claim upon the issue, whether it was of the character designated in the decree, and the amount which should be allowed as an indebtedness. But to permit such purchaser to re-litigate the question, of whether that decree was erroneous, in establishing such priority of lien would, it is with deference submitted, overthrow well settled principles, governing decrees for foreclosure and judicial sales.

In the first place, it would require a litigation to be carried on over the relative priorities of lien of the mortgagee and creditors, after the lien of the former had been satisfied, and he no longer a party in interest in the new, or revived, litigation.

In the second place, it would allow a purchaser at a judicial sale not only to take title from the court, subject to the prior rights of parties adjudged by the court, to turn about and stultify himself by denying such prior rights, but in effect allow him to deny his own title, because that must rest on the validity of the very decree he assails.

The case would be analogous to that of a party with a second mortgage, made expressly subject to a prior incumbrance, denying, not only the supremacy of the first mortgage, but the right of the mortgagor to execute either instrument.

This Court has held that a purchaser at a judicial sale becomes a party to the cause only as to his purchase.

Blossom v. *Railroad Company*, 1 Wallace, 655.

To allow him to contend a second time with either of the parties to the cause over those matters which were determined before he became a purchaser, would, in effect, give him the rights of a party generally in the cause, tend to unsettle titles acquired through judicial sales, and introduce an element of speculation, accompanying such purchases, with a power to foment and continue litigation, which are directly contrary to the principles long established by courts of equity for the regulation of sales made under their decrees.

If, then, appellant could not, and should not, have been permitted to wage further controversy with appellees over their priorities, in case the lien of the latter had not been foreclosed, but the property sold under the decree foreclosing the mortgage only, then it is submitted that he ought not to acquire any greater rights by having procured the decree of March 2d, by which the lien of appellees was foreclosed and the property sold to appellant himself, free and clear of that lien. That supplemental decree recites that it was entered on the motion of appellant. (See Mr. Butler's brief, pp. 31 and 32.)

The case of *Swan* v. *Wright's Executor*, 110 U. S., 590, involved the principle which is here contended for on behalf of the appellees.

The controversy in that case was over the right of a purchaser of railway property at a foreclosure sale to contest certain claims on the ground of fraud. The amount of those claims had not been determined at the time of the decree for foreclosure and sale, but were before the Court for such determination. That decree provided that the sale "shall be subject to the "liens established, or which may be established, by said "court in this cause on reference heretofore had and now "pending, as prior and superior to the lien of the "holders of bonds issued under the first mortgage de- "creed to be foreclosed by former decree in said cause;" further, "that all moneys paid as earnest under this de- "cree shall forthwith be reported to this court, and subject "to its order, and upon the confirmation of the sale made "under this decree, the purchaser shall have and be in- "vested with a good title to the said railroad and property "sold under this decree, subject only to what may remain "unpaid of the claims and liens established by this court "as paramount and superior to the liens of the first mort- "gage and first mortgage bondholders." Still further; the balance of the purchaser's bid remaining after paying said earnest money was directed to be paid in such manner and at such time as the court may direct, "except that said balance may be paid by the purchaser "on any claims which may have been established "by the court in this cause as paramount and superior "liens to said first mortgage and said first mortgage "bondholders." The sale took place before the report on the claims in question came up for decision. The assignee of the purchaser contested the validity of the claims and asked to have them re-submitted, with leave to produce additional evidence in opposition to them. That motion was denied. He then asked to file exceptions to the report; that application was also denied, and the report was in all things confirmed. Afterwards the sale to the assignee of the purchaser was also confirmed. The decree of confirmation provided in substance that the sale was made subject to the payment of claims established by the former decree, or subsequent to the decree of confirmation and before the confirmation of the sale, or which might thereafter be established by the court in the cause, on the reference theretofore had and then pending. Subsequently a new corporation, to which had been conveyed the railway and property, filed its bill, attacking the validity of those claims upon the ground of fraud, and this Court held that the bill had been properly dismissed by the Circuit court. On page 598 the Court say:

"The claim of appellant, as the purchaser of the "property, to reopen the litigation, to which he was not "a party, and which related to liens expressly subject to "which the property was sold, purchased, and conveyed, "and which liens were fully examined upon issues be-"tween and notice to those who, at the time the decree of "sale was rendered, were alone interested in their recog-"nition or rejection, does not seem to rest upon any found-"ation of justice or equity."

II.

THE RELATIONS WHICH HENRY CRAWFORD SUSTAINED TOWARDS EACH OF THE APPELLEES WHEN THEIR RESPECTIVE CLAIMS ACCRUED, AND ALSO HIS RELATIONS TO THE RAILWAY CORPORATION, WERE SUCH AS TO PRECLUDE HIM, UNDER THE PRINCIPLES ENFORCED BY COURTS OF EQUITY, FROM ACQUIRING THE MORTGAGE-BONDS IN CONTROVERSY, TO THE PREJUDICE OF APPELLEES.

In the discussion of the above proposition we shall assume that the evidence proves, that on and after October 3, 1881, when Mr. Crawford, in the name of the railway company, made the contract with the Pittsburgh Bessemer Steel Company (the first entered into by either of the appellees), he was in practical control of the corporation. We shall assume that such was the fact, because Crawford himself swore to it, as well as every other person connected with the company at that time, who was called as a witness. We have found it nowhere seriously denied in the case, except in the briefs for appellant.

The question is: Can a person thus in control of a railway corporation, absolutely, as much as of "the "clothes he wore," as completely as if he were a "corporation sole," and exercising his authority as fully as the "owner of a horse and buggy" in the matter of driving, contract debts in its name for materials and labor used in the construction of its road, and then, at his pleasure, have the corporation execute and record a mortgage, and himself take the bonds secured thereby, and hold the same, as a preference, for amounts he had himself paid out as sole stockholder and owner, without any contract therefor with the corporation, express or implied?

It is claimed, on behalf of appellant, that the courts have never gone so far as to impress a fiduciary relation upon one holding the position of Mr. Crawford. Whilst that contention is one that cannot be sustained by the decisions, yet, let it be conceded, for the argument, that such is the case. It certainly cannot be claimed that in any analogous case, a court of equity has ever carried out, and given effect to transactions upon their merits, such as are here shown.

By an almost uniform current of decisions, courts of equity have declared that directors, trustees, agents and officers of a corporation are trustees in dealing with the corporate-business or property.

Whether a particular transaction, on the part of any of them, with their corporation, shall be allowed to stand, will depend upon the special facts surrounding that particular transaction.

It has been the just pride of courts of equity that their rules, adopted for the prevention of wrong-doing, bad faith and the violation of confidence reposed, whilst resting upon fixed principles, shall not be so specifically formulated, that adroit and unconscionable men may be able, under an exact compliance with their requirements, to effect their evil purposes, because experience has taught, that such men, in carrying forward dishonest transactions, are careful to bring their proceedings within all prescribed rules, and set them forth in accordance with all requisite formulas.

As was said by this Court, in the case of *Graffam* v. *Burgess* (117 U. S., p. 186):

"It is insisted that the proceedings were all conducted "according to the forms of law. Very likely. Some of "the most atrocious frauds are committed in that way. "Indeed, the greater the fraud intended, the more particular the parties to it often are to proceed according to "the strictest forms of law."

The situation at the time the $1,000,000 of bonds were obtained by Crawford was, that the corporation was indebted to various third persons for labor and supplies. Their debts had been contracted by his own procurement, either in person or by his agents, upon the credit of the company, the creditors relying upon its property for payment.

Crawford was not proceeding upon the idea that the company owed him anything; the only obligation the company was under to him, if at all, was—as he himself swears—for voluntary advances of moneys upon his part, without any contract or agreement with the corporation for such advances or repayment. He was engaged in building his own railroad. He advanced his money to pay for labor and material in constructing his own property, upon the faith that after the debts to third persons were all paid, he would own it.

When the enterprise began to meet financial embarrassment, and the general business outlook of the country to grow dark, he asked Foster for the bonds, and Foster gave them to him to the amount of a million dollars. And then, without any change in matters along the line of the road, materials continued to be furnished and labor to be performed, the same as before. And it is insisted by appellant's counsel, that those bonds rest upon a superior equity to the claims of those third persons, who thus furnished material and labor, which went to enhance the security of the bonds.

It may be true that a corporation, having several creditors, may prefer one or more of them, by executing a mortgage upon all its franchises and property to secure some at the expense of the others.

That is not this case.

Crawford had not paid out over three hundred thousand dollars, when he demanded from Foster, and received, a million dollars in bonds, secured by a first lien upon all the franshises and the property then placed in the railroad, or that thereafter might be placed therein. What right had Foster to deliver those bonds for the corporation to secure Crawford for his voluntary advances, and leave the other creditors remediless? If it be answered, that the board of directors, at the meeting of October 29, 1881, gave him such authority, the facts contradict it. The president was authorized to "*negotiate*" the bonds, not *pledge* them. In so important a transaction as this, where the president was authorized to negotiate an entire issue of first mortgage bonds for the purpose of building the railroad, and he delivered one million dollars of them to one creditor of the company, as security for past advances, amounting to less than one-third that sum, the transaction amounts to a fraud, not only upon the other unsecured creditors, but upon the corporation itself.

But even the board of directors, as then constituted and controlled, were powerless to give Crawford a prior security to other creditors. They were his agents and creatures of his will. At that very time he held and owned, by purchase, the certificates of stock of five out of the nine. Those credentials, which the law of this company's existence made essential to the official life of these five directors, were in the possession and ownership of the man between whom, and the corporation, they undertook to make a contract of this gravity, putting in his power a first security of a million dollars upon all it had or ever would have.

At the time these bonds were delivered, all the evidence shows this corporation to have been insolvent. In other words, its property, on a sale, would not have paid its debts, and Crawford's own evidence shows, that it was in apprehension of insolvency, that he asked for and got the bonds.

That under such circumstances that property was a trust fund to pay its creditors is well settled.

Wood v. *Dummer*, 3 Mason, 313.
Curran v. *The State of Arkansas et al.*, 15 How (U. S.), 304.

These directors then should have, as impartial trustees, seen to it that the property was administered as a trust fund.

Under the facts, it requires no argument to show that as between the creditors, who had furnished labor and materials to the company, by Crawford's procurement (relying on its property for payment), and Crawford, who had advanced money in part payment for work and supplies, without any contract with the company, and as its sole proprietor, that it was grossly unfair to give him a first lien on all that property for three times the amount of his advances and leave those creditors without any redress. The evidence leaves it clear, also, that as between Crawford and the creditors, Foster and his board of directors were in no position to act as impartial trustees. They were not in position even to act impartially for the company, as against Crawford. He held the control of the stock. He even owned the stock of a majority of the board.

By the agreement of June 23 he held the places on the board of the entire nine directors at his disposal. What actually happened when he demanded the authority of the board for the bonds and mortgage, and that Foster be authorized to negotiate the bonds, and afterwards, when he demanded the bonds of Foster, only goes to show, how salutary is that principle of equity in the prevention of injustice, which keeps a person in Crawford's position of corporate-control from using it for his own selfish ends.

Had Crawford been one director out of the nine, when he got the bonds, then the uniform decisions of the courts would have left nothing to urge in favor of the transaction. Why? Because being one of nine trustees in control of the corporation, he and his associates could not make a valid contract for security to himself on the part of the corporation. It is submitted that this transaction stands on no firmer ground, where he is not only the owner of the corporation, but in absolute control of the whole board of directors.

But as unjustifiable as the matter was in any view, Crawford did not even have the semblance of authority from his superserviceable board of directors and president to do with the bonds as he did. The unsigned memorandum left by Foster with the bonds, stating what disposition should be made of them, clearly provides for their sale and use of the proceeds. There was no authority to pledge them; and the first pledge with Dull and McCormack, and the second with Drexel, Morgan & Co., were each a plain violation of the letter and spirit, not only of Foster's memorandum, but also of the resolution of the board of October 29, 1881.

The doctrine of courts of equity declaring fraudulent and void, at the instance of a corporation, any contract, made by authority of its directors, wherein any director is interested personally on the other side, involves the same principle contended for here as against Crawford. The question always is: Were those directors in position to act fairly, as between their corporation and the other party? Had Foster and his directors been dealing with Crawford, as a third person at arm's length, and as one who had no control of the corporation, they never would have put in his possession a million dollars of the company's obligations, secured by a first mortgage on all its franchises and property, present and prospective, with power to strip the corporation of everything and leave its creditors unpaid.

In the case of *Goodin* v. *Cincinnati R. R. Co.*, 18 Ohio State Reps., 169, the Court declared the action of a board of directors of a canal company fraudulent and void in authorizing an agreement on the part of that company for the sale of its canal to a railroad company. The majority of the directors of the canal company do not appear to have been interested in the railroad company, but they were elected *in the interest of the railroad company, and upon stock owned by it.*

In *Kohler* v. *Black River Falls and Iron Company*, 2 Black, 715, the Court declared a mortgage, made to secure the debts due to certain directors, *and to others who were not directors*, void *in toto*. The Court say: "In executing "this mortgage and thereby securing advantages which "were not common to all the stockholders, they were "guilty of an unauthorized act, and violated a plain "principle of equity applicable to trustees."

The true test as to the equities of these creditors as against Crawford, upon this point, is to consider the case freed from the subsequent hypothecations and sales of the bonds, just as if Crawford himself had advanced the money which Drexel, Morgan & Co. loaned to him, and as if Crawford had been the plaintiff, instead of Porter. Because—as we shall see—Drexel, Morgan & Co., and appellant and his syndicate, are in no better position than Crawford would be in. After the road had been built, and in the condition it was found when the Court took possession in October, 1884, Crawford files a bill to foreclose the mortgage securing the million dollars of bonds delivered to him in December, 1881, and the $200,000 received in February, 1884, just as shown. The unpaid creditors are made defendants, and it is shown by them, that the construction contract, and the action of the board of directors were as proved here. Unable to maintain the claim to the $200,000 of bonds, under the construction contract, nor to uphold that contract itself, he falls back upon his equity to the million dollars of bonds obtained from Foster.

Those creditors show, that when Crawford made the advances, from June, 1881, down to the time he got the bonds, he had no agreement with the company for a lien for his advances, nor even a claim against it, but he paid out his money as owner; that he had control of the directory; and that Foster, the president, as between Crawford and the company and its creditors (and every one but Foster himself), obeyed Crawford's wishes in everything:

That in authorizing Foster to deal with the bonds, the board, in its resolution (drawn by Crawford himself), authorized him to "negotiate" the bonds, and that Foster's memoranda as to disposition of the bonds by Crawford, only contemplated or provided for the "proceeds" of the bonds to be used, and that Crawford was to have part of the "proceeds" to reimburse him for advances, upon condition that he should furnish the necessary money to pay the debts contracted since July 1, 1881, and to complete the road, and equip it from Fair Oaks to Attica:

That Crawford had done none of these things in full, but had partly built the road and partly equipped it, and had left the company saddled with nearly $200,000 of debts for construction: That in addition to this, he had issued to himself over $700,000 of capital stock of the company without paying a dollar therefor.

In such a case, what would be the equities of Crawford and these creditors?

To give him a preference would be in effect to allow him to become his own creditor, and make his debt a first lien on his own property, to the exclusion of the creditors who furnished material and labor in building it up.

To do this, would be to do what courts of equity have never yet done in making rules to prevent fraud and imposition. It would be to say: If the directors of a corporation give one or more of their number, who are its creditors, a preference above the other creditors, in the payment of their debts, such preference will be set aside; but if a creditor owns all the stock of a corporation, and has absolute control of its directors (who are his mere agents), and he procures such directors to mortgage all its property and franchises to himself, and leave other creditors without remedy, courts of equity are powerless to interfere.

What Mr. Crawford's intention may have been in getting possession of the million dollars of bonds in the latter part of December, 1881, as affecting him in a moral sense, is not here under discussion. The necessary and probable effect of that transaction—if effect is to be given to it—upon the appellees, who then were, or subsequently became, creditors of the corporation, is the subject for consideration.

Doubtless Mr. Crawford expected, at first, to be able to carry the enterprise to a successful end; pay all creditors in full, and make a fortune out of the venture, and besides achieve the unique distinction of being the individual owner of a railroad, as much as if he were a "corporation sole."

No doubt he still hoped for that result when he took the million dollars of bonds. But the necessary effect of what he did when that transaction took place—if it is to stand—was to place these appellees, where by no possibility could they ever receive pay for their materials and labor, which went to build up the property, except as he, out of pure grace and favor, should pay them out of his own pocket.

As was was said by DRUMMOND, C. J., in *Ex parte* Perkins, 5 Bissell, 265:

> "A man must intend—such is the rule of morals, of "law, and of common sense—the necessary consequences "of his own acts."

What Crawford's original intention was is perfectly apparent. He testified that the only practicable method known to him, by which he could become sole owner of all the securities representing the property of the corporation, was by means of a construction contract. He prepared such a contract, dated in October, 1881, and sent it to the Foster-board of directors to be authorized. He says that he had been trying by letter to get Foster to call the board of directors together (as we infer) to authorize the contract, but had been unable to do so; and finally found out that no meeting of the board would be held until he should buy Foster's remaining $10,000 of stock.

The reason why Foster would not authorize the contract was because it would have rendered his stock wholly valueless, by making it subject to prior securities, to be owned by Crawford, at the rate of $35,000 per mile.

It is owing solely to that fact, that Crawford did not obtain the million dollars of bonds under that construction contract, instead of accounting for them under his contract of March 18th.

It is contended on behalf of appellees that even upon the theory that the mortgage of November 1, 1881, was a valid mortgage, yet, that it had no force or effect as a lien upon the property until the bonds secured thereby should be *issued* or *uttered* by the corporation.

For this corporation to legally issue by proper corporate-action its bonds, representing a first lien upon the property of the corporation, would seem to require, in so grave a matter, action by the corporation of a different character than shown in this case, on the occasion, when Mr. Foster, the president, received from Crawford's agent, the bonds then in Crawford's possession, and having signed, handed them back to such agent to the extent of a million dollars, without even having taken a receipt therefor.

The first corporate action taken by the directors of the company relative to the delivery of the million dollars of bonds, was the one recorded in the records of the company, at the meeting of the Crawford-board, held on

March 18, 1882. As the record of that meeting was written up in the book by Mr. Crawford himself, he became bound, by the recitals therein, so far as they affect himself.

That record recites that, "The treasurer" [Mr. Crawford's son], "reported to the board, that for advances "made, and to be made by the contractor, there had been "delivered to him *to be accounted for under such contract* "*one thousand bonds of one thousand dollars each.*" That action the record states was "fully approved and confirmed."

In his letter to the directors, of February 18, 1884, he treats the $1,000,000 of bonds as having been received by him under his construction contract.

It would, therefore, seem to be clear, *that the validity of the delivery to Crawford of the million dollars of bonds, hangs upon the validity of Crawford's construction contract.*

III.

CRAWFORD'S CONSTRUCTION CONTRACT WAS FRAUDULENT AND VOID AS AGAINST THE APPELLEES, CREDITORS OF THE CORPORATION.

Much emphasis appears to be placed in the briefs for appellant upon the fact, that Crawford was not actually president or director of the corporation *at the time* the contract was presented to the board of directors, on the 18th of March, 1882. He became invested with those offices on the 15th of that month, three days before, when he selected persons to take future charge of the affairs of this corporation, in his own employment, and who, it is not denied, were his agents actuated with the single purpose of doing, or leaving undone, precisely what their employer directed. It is difficult in the light of the record, showing what was done, and in view of Crawford's evidence, to treat with the gravity—which the interests involved demand—the question as to the validity or invalidity of this construction contract. In the first place its provisions are most unfair to the corporation and its creditors. It, in effect, gave the contractor the right to build pretty much such a railroad, made up of such materials, and constructed in such manner as he chose, with a right to him, that in any future extensions of the road at any time, at his option, he should have the right to build the same as contractor for the corporation, and at the same price and on the same terms as the contract in question.

It provided for no engineer or other agent of the company as arbitrator between the parties, to supervise the work of construction, and to determine whether the material used and the construction done were proper or fair, but left that matter substantially to the contractor himself.

For building that kind of a railroad, in that sort of a way, the contractor was to have everything belonging to the railroad corporation, *in esse* or *in posse*, that is to say $60,000 per mile in first mortgage and income mortgage bonds, and full paid capital stock, and all subsidies, donations, *etc.* Although the railroad company had received subscriptions to the stock from the various towns along its line (part of which had then, and the remainder has since been paid in money), to the amount of nearly $50,000, yet, ahead of that stock, which would ultimately belong to those municipalities, Crawford was to receive from the corporation, first and income mortgage-bonds, at the rate of $40,000 per mile, and capital stock on a par with that which would belong to the municipalities—which had and were to pay full value for the shares subscribed by them—at the rate of $20,000 per mile more.

The effect of the contract, was to place upon this railroad property, as a prior and superior lien to the claims of all creditors then existing, or whose claims should thereafter accrue, first and income mortgage-bonds at the rate of $40,000 per mile, or a total of $3,200,000. And that, too, upon property, which, after its final completion, and at a time of greater financial prosperity than when the contract was made, sold at judicial sale for $501,000.

Had Crawford, instead of having resigned at the opening of that meeting of the board of directors, of the 18th of March, 1882, continued his official positions as president and director for about ten or fifteen minutes longer (the period covered by the meeting), there would then, under the authorities, have been no question or doubt as to the invalidity of that contract.

Thomas, *Trustee*, v. *Brownsville*, *Fort Kearney and Pacific Railroad Company*, 109 U. S., 522.

Wardell v. *Railroad Company*, 103 U. S., (13 Otto), 651.

It is submitted, however, that before a court of equity (which regards the substance of things done rather than the attendant forms), Mr. Crawford's resignation did not change in the slightest degree the legal effect.

In *Gilman*, *Clinton and Springfield Railroad Company* v. *Kelley et al.*, 77 Ill., 426, a bill was filed by a stockholder of a railroad company to set aside a contract made with a construction company authorized by the board of directors of the railroad company, for the building of the road of the latter, upon the ground, that after the contract had been authorized and entered into, the president and two of the directors of the railroad company became stockholders in the construction company. The Court held, that this avoided the contract at the election of the corporation or of its stockholders.

The Court, on pages 435-436, say: "It is not con-
" tested the president of the railway company, and two of
" the directors, *after the making of the contract* with the
" Morgan Improvement Company, became stockholders
" in that company, with an expectation of personal gains.
" Their interest was acquired before the contract was
" performed, and during all the time it was being per-
" formed, they still retained their position as directors of
" the railroad company and continued to act in its behalf.
" This they could not rightfully do. It is no matter, it
" may have been really to the advantage of the railroad
" company, and that no fraud in fact was intended. It was
" a breach of the duty they owed to the stockholders, for
" whom they were, in a most important sense, trustees,
" and any one interested would be entitled to have an ac-
" count of the profits and gains taken, if any should be
" realized under it."

In this case it is apparent that Mr. Crawford's control over his board of directors, *after* the resignation, was precisely what it was *before*.

Each of those directors, present at the meeting, who was sworn, testified that what he did, was for the sole reason that Crawford requested it.

Crawford drew the contract, presented it to Mr. Starin, told the latter that it was his, Crawford's desire to resign, "and that the board would elect me" [him] "president."

Crawford also stated that he had prepared a construction contract which he presented to Starin to have approved by the directors. That the reason why he would resign was, "that he did not desire to be president of the "corporation, and at the same time have a contract for "the construction of the property owned by the corpora-"tion." (Rec., 564.)

It is recognized as an elementary principle in determining the question as to whether a contract has actually been entered into, that the fact as to whether the minds of the contracting parties have met is all important.

If our learned adversaries in their reply will kindly point out when, where and how this corporation exercised any judgment or deliberation in agreeing to this contract, aside from what Mr. Crawford determined for it, they will do what we submit is an impossibility.

As bearing upon the equities between Henry Crawford and appellees, see:

Bradley v. *Farwell*, 1 Holmes, 433.
Emporium Co. v. *Emory*, 54 Ill., 345.
Corbett v. *Underwood*, 5 Sawyer, 63.
Cooms v. *Tome*, 9 Fed. Rep., 532.
Stint v. *Taeger Milling Co.*, 13 Fed. Rep., 302.
Cappera v. *R. R. Co.*, 3 Dill., 228.

As illustrating the application which courts of equity make of the principle which restrains persons in any relation of trust, confidence or special advantage, from using their positions, relations or power, to the injury of those who have a right, in conscience, to be dealt with fairly, the decision of this Court in *Jackson* v. *Ludeling*, 21 Wall., 616, has furnished a salutary and emphatic example.

It is presumed, that prior to that decision, other persons besides the appellees in that case, had made use of their ownership and control of railway-mortgage-bonds to the injury of some of their co-bondholders, and that they had done this in the belief that a court of equity could not reach them, provided their proceedings should be in due form of law; because of their supposition that, one bondholder sustained no relations of trust or confidence to his co-bondholders, by virtue of their securities being protected by a common lien under the same instrument.

This Court, however, under the facts in that case, would not suffer the great wrong, therein attempted, to be consummated. In that case, one of the principal parties to the wrong done was not a director, but, as stated by this Court, "he was a leading member of the "combination and its chief agent to carry out its plans."

The Court on page 634 say: "In this case the com-"plainants rely upon no irregularity of proceeding, upon "no absence of form. The forms of law were scrupu-"lously observed. But they rely upon faithlessness to "trusts and common obligations, upon combinations "against the policy of the law and fraudulent, and upon "confederate and successful efforts to deprive them "wrongfully of property in which they had a large inter-"est, for the benefit of persons in whom they had a right "to place confidence."

IV.

AS BETWEEN HENRY CRAWFORD AND APPELLEES HE IS ESTOPPED BY THE PROVISIONS OF HIS CONSTRUCTION CONTRACT FROM CLAIMING A PRIOR LIEN UPON OR EQUAL DISTRIBUTION IN THE PROCEEDS OF SALE OF THE PROPERTY OF THE RAILWAY COMPANY.

By the construction contract, Crawford was entitled to be paid on account, as the work progressed, at the rate of $15,000 per mile in first mortgage bonds, a like amount in income bonds, and also a like amount in stock.

The provisions of the contract clearly required Crawford to construct and pay for the materials and labor used in building the road, as a condition to receiving the securities provided in the contract.

Had Mr. Crawford himself been the complainant in this cause *in form* (as we shall hereafter show that he was *in effect*), and was seeking to foreclose the mortgage for the $1,200,000 of bonds as against these appellees, defendants, in such a case as this (where a creditor's suit to administer the assets of an insolvent corporation was combined with the mortgagee's suit for foreclosure), a perfect answer to his demand by appellees would be found in his construction contract.

The legal effect of that instrument required him to build *and pay for* the road as a condition to receiving the bonds and other securities. The company was to give him its commercial paper for his accommodation to enable him to negotiate loans for the work of construction "or to evidence the purchase of material," etc., but such commercial paper was "always, on maturity, to be fully "paid" by him, "and the railway company forever pro-"tected and saved harmless therefrom." (Rec., 887, 888.)

There was no authority, in even *that* contract, for Crawford to build the road on the sole credit of the corporation, as principal debtor, as he did in the case of each of the appellees.

In his letter to his board of directors of February 18, 1884, he requests the board to issue to him "in addition "to the $1,000,000 first mortgage bonds, a further sum "of $200,000 first mortgage bonds, and also $1,200,000 "income bonds and $1,200,000 of the stock, the same to "be a payment on account to me." (Rec., 896, top page.)

The road, so far as then built, was called eighty miles in length. The request, therefore, for the securities, was made and granted on the basis of $15,000 per mile of constructed road in each class of securities.

At that time the claims of all the appellees had accrued in full, except those of Irwin and Crerar, Adams & Co., and those had substantially accrued.

It is submitted that Mr. Crawford could not in such case be allowed to foreclose the first mortgage bonds as against such creditors.

They, in working out their equities, through the corporation as against him, could insist that they had a prior right to payment out of the property of the insolvent corporation.

The corporation clearly would have a perfect defense against the bonds in his hands, because he had not done that which he had agreed—to the extent of the unpaid indebtedness for construction with which he had burdened the company. The corporation, being insolvent, and in his control (the same as it has been in appellant's throughout these proceedings), might admit the amount of the mortgage debt and lien, and confess his right to a foreclosure the same as it has here. Yet in such a case as this, appellees would have the right to defend, to the extent of protecting their own interest.

That defense would be upon the theory that Crawford's construction contract should stand *as against him;* that he had never become entitled to the bonds by reason of the fact that it was only upon condition that he should pay the claims of appellees and others creditors for the work done and materials furnished; that, as he had himself contracted with the corporation to pay the very claims of appellees, as a condition to receiving any bonds, and having failed to do that, but, on the contrary, having contracted the indebtedness due to appellees on the credit of the corporation, the bonds in his hands, as against appellees, did not belong to him, and his claims on account thereof should be postponed to the rightful claims of appellees, prior by contract and prior in equity. Not only to such a bill for foreclosure of the mortgage securing his bonds would the principles, "he who seeks equity must "do equity," and "he who comes into equity must come "with clean hands," be applicable to his case, but the naked contract rights of these appellees would bar and preclude him from obtaining a lien upon the property of the corporation, except subject to the prior lien of those appellees whose claims he was bound, not only in equity and good conscience to pay, but also by his written legal obligation.

V.

THE LEGAL SITUATION WAS THAT OF A CORPORATION, ONLY IN NAME, VESTED WITH THE LEGAL TITLE TO THE RAILWAY PROPERTY FOR THE USE OF HENRY CRAWFORD, AS SOLE BENEFICIARY.

This is what Mr. Butler in his brief calls "the nebular theory of the case."

We are content that the name shall stand, if it is intended as descriptive of the object under conjecture.

We venture the assertion, that the records of our courts will be searched in vain for a case, where such large and substantial transactions, concerning a railway corporation with valuable property, were so entirely "nebular" as regards substantial, corporate action, by a *real* board of directors and a corps of *real* officers, as the record in this case presents.

Where a person, neither director, officer nor agent of the corporation, without any consultation with those who officially *were* its representatives, makes large purchases of materials in its name and on its credit; appoints a general superintendent and other administrative officers for it, to have charge of the construction and operation of its road; directs a mortgage securing two millions of dollars of its bonds to be authorized by a board of directors, of whom a majority had not the slightest pecuniary interest in the corporation, and himself takes a full half of them as his own property; and then by another board, composed wholly of his own dependents and agents, has a construction contract, giving him securities at the rate of $60,000 per mile, representing all present or future acquired property of the company, authorized *as of course;* assigns to the corporation a contract for the purchase of the stock representing all the property of another railroad company, and then takes the same contract and hypothecates it as his own property as security for his own notes, and along with it every security of the corporation issued or to be issued, with a guarranty that he has control of the corporation; and all this time keeps the record book of the company (the sole volume in its archives) in his own personal possession, where even the president of the corporation cannot inspect it, and writes up the records himself; and then, when on the stand, testifies that he regarded that construction contract as having been entered into "*rather more as a formality* "*than anything else;*" that he considered himself, all this time, "*practically a corporation sole;*" and respecting his right to do all these things, he considered his case that of a "*man who owned a horse and buggy, had a right to* "*drive it.*"

It will not do, in the face of this record, for our learned brother to make light of "the nebular theory of the case." The main evidence bearing upon it comes from his own witness, the official records of the corporation and his client's own muniments of title.

Mr. Crawford, who thus testified, was the principal witness called by appellant on the hearing before the special commissioner; took a leading part in the examination of appellant's other witnesses, and was generally of counsel in the case in the Circuit court; and, unless our knowledge of his transcendent ability and powerful diction, be much at fault, our brother Peckham and brother Pierce have had some of the rays of his genius to light them in the preparation of their very ingenious brief in this Court.

If other persons had been ambitious to occupy the relations towards a railway company sustained by Mr. Crawford in this case, our legal nomenclature would have to receive an addition, to designate the office and position. If one were allowed to coin a phrase to designate his functions here, it would be that of "president and "directors *de son tort!*"

What was said by the Court in *Sawyer* v. *Hoag* (17 Wall., 610) applies here (p. 623.):

"After all, this artificial body is but the representative "of its stockholders, and exists mainly for their benefit, "and is governed and controlled by them through the "officers whom they elect. *And the interest and power* "*of legal control of each shareholder is in exact proportion* "*to the amount of his stock.* It is, *therefore, but just that* "*when the interest of the public, or of strangers* dealing with "the corporation is to be affected by any transaction between the stockholders who own the corporation and "the corporation itself, such transaction should be subject to a rigid scrutiny, *and if found to be infected with* "*anything unfair towards such third person, calculated to* "*injure him, or designed intentionally and inequitably to* "*screen the stockholder from loss at the expense of the* "*general creditor, it should be disregarded or annulled so* "*far as it may inequitably affect him.*"

VI.

DULL AND MCCORMICK RECEIVED THE BONDS, SUBJECT TO THE SAME EQUITIES AGAINST THEM WHICH COULD BE URGED WHILST THEY WERE IN CRAWFORD'S POSSESSION.

The evidence of Jewett and Crawford relative to the transaction of January 27, 1882, in New York, shows very clearly that Dull, and Jewett (the attorney for Dull and McCormick) understood precisely the relations that Crawford sustained to the corporation. That he was sole stockholder, that he was contractor, that he was in control of the directory and in manual possession even of the company's record book, which he agreed to deliver to Jewett on their return to Chicago, along with all the issued stock, and which he did, whereby Jewett learned all about the meetings of March 15 and 18, 1882. That Dull and McCormick took in pledge, not only the million dollars of bonds, but all the stock, and the control, through Crawford, of the corporation, and all this as security for Crawford's past due note for the purchase money (amounting to only $115,000) for the capital stock of another corporation.

To say that, under such state of facts, Dull and McCormick were purchasers or pledgees of commercial paper, in the ordinary course of business, in good faith and for value, is to say what Mr. Jewett, who attended to the matter as counsel, did not state done, but rather that his clients simply took what they could get, as additional security to a pre-existing overdue debt of Crawford.

As we do not understand that counsel for appellant rely upon any equities accruing to their client from this pledge, no further mention will here be made of that transaction.

VII.

THE EQUITIES OF THE CREDITORS AGAINST THE MILLION DOLLARS OF BONDS IN THE HANDS OF DREXEL, MORGAN & CO. ARE PRECISELY WHAT THEY WERE IN THE HANDS OF CRAWFORD.

Drexel, Morgan & Co. did not agree to loan Crawford, nor did they advance the money, on the *faith* of the million dollars of bonds. The testimony on that subject is found in Crawford's evidence, in the documents presented to them by him, and in the contract for the loan between him and them of January 5, 1883. Crawford testified that they made the loan out of feelings of personal obligation to himself for valuable services performed by him for them in another matter. (Rec., 650.)

By the terms of the agreement, they made the loan upon the following obligations, collaterals and conditions, viz.:

First. Delivery of Crawford's promissory notes.

Second. Deposit in pledge of all the capital stock of the Block Coal Railroad Company, with an assignment of Crawford's contract of purchase of the same, assigned by him to the Chicago and Great Southern Railway Company the year before.

Third. Deposit in pledge of all issued capital stock of Chicago and Great Southern Railway Company, amounting to $60,250.

Fourth. Agreement to put in pledge any further stock of Chicago and Great Southern Railway Company that should be isssued.

Fifth. Pledge of $1,000,000 first mortgage bonds, being all bonds then issued.

Sixth. Placing in custody of Drexel, Morgan & Co. of the other $1,000,000 unissued bonds, not to be issued without their consent.

Seventh. Money to be advanced by Drexel, Morgan & Co. to be spent on road under supervision of their agent.

Eighth. That Crawford should at once consolidate the Chicago and Great Southern and Block Coal companies.

Ninth. Guaranty that Crawford had control of the Chicago and Great Southern company, all its bonds and capital stock, and upon payment being made to Dull and McCormack, the whole control of Block Coal railroad should pass into hands of Drexel, Morgan & Co.

It was upon the faith of the above that Drexel, Morgan & Co. agreed to make the loan.

The substance of the whole matter, in the view of a court of equity, is, that they, instead of making a loan upon the bonds secured by mortgage giving them a first lien upon the property of the railway company, required that they should also have full control of the corporation at the same time.

They were at once mortgagees and mortgagors.

If Crawford could not, as owner of all the stock, representing the equity of redemption in the corporate property, and in full control of the company, get a prior lien on its property and franchises as against other creditors for *his* advances, then it is submitted that Drexel, Morgan & Co. were in no better position for *theirs.*

They bargained for the absolute control of a million dollars of unissued bonds. The question as to when, and under what circumstances, that million dollars of bonds should be issued, and what disposition should be made of the proceeds, would ordinarily be an act of the highest exercise of corporate power on the part of the corporation itself. The same is true with respect to the future issues of capital stock. Yet the actual situation was so well known to Drexel, Morgan & Co. that they had no hesitation in taking a contract from Crawford, bargaining through him, not only for all the bonds thereafter issued, but for every additional share of stock that might be issued by the company.

Not only this, but Drexel, Morgan & Co. knew they had every share of issued stock of the corporation. They then knew that not a single member of the board of directors had any stock. They therefore knew there was not a lawful board of directors, so that they dealt with Crawford as the actual owner of this corporation, and in as complete domination as if he was, what he swears he considered himself to be, a "corporation sole."

We have an instance of a "corporation sole" in the case of the bishops of one of our ecclesiastical denominations. What would the equities of pledgees of bonds, secured by mortgage upon a newly constructed church, as against other creditors, who had done work and furnished material for the building, where the bishop had issued bonds to himself as an individual, under a contract made by him *as bishop*, with himself *as an individual*, and had, under the same contract, made a deed to himself of the equity of redemption in the land and building, and had also transferred that equity to his pledgees?

So far as Drexel, Morgan & Co. occupying the position of innocent pledgees, and holders of the million dollars of bonds taken in good faith and in the ordinary course of business, the contract under which they got these bonds was a fraud upon the corporation, its creditors and minority stockholders. For a loan, at the utmost, of $400,000, they got as security $1,000,000 first mortgage bonds, issued, and the control of the other $1,000,000, unissued, and then got control of the corporation itself, so that they could prevent it from paying the bonds or interest thereon, if it should be to their interest so to do.

If the company needed more money to go on with the work, what security was available? It could not use one of the million dollars of bonds unissued, nor sell a share of its capital stock, except on condition that the purchaser should pledge the certificate with Drexel, Morgan & Co. So that for all the work and materials then done and furnished, Drexel, Morgan & Co. had an absolute first lien; and all that other persons furnished in labor and material must also go to improve their security, with not one dollar of possible pecuniary resources on the part of the company to pay with.

The evidence in this case shows that three of the appellees now before the Court did the work and furnished the materials (for which their claims are now held) since January 5, 1883, when Drexel, Morgan & Co. first got control of this corporation, and this pretended lien on all its property.

Suppose Drexel, Morgan & Co. were trying to foreclose this mortgage under the facts shown. They had absolute power of control over the corporation itself. They had their agents along the line to see to it that their advances went for labor and property to enhance the value of their security. They then knew that this corporation was contracting debts that never by any possibility could be paid.

Whenever Crawford came along and paid his debt to them, they were obliged to pass back to him all the million dollars of issued bonds, those unissued, all the stock and the control of the company.

The corporation was studiously excluded from being a party to this loan. It could not redeem the securities for its benefit; neither could its creditors. Had these appellees sought, by paying the debt of Crawford, to redeem the bonds, it would have availed them nothing. *The bonds were pledged as Crawford's.*

If the plain facts in this case do not show that Drexel, Morgan & Co., in procuring this corporation, through their debtor, Crawford, to contract debts which it could never pay, were guilty of fraud against these appellees, then it will be because that wrong is not allowed to be consummated.

A further illustration of how utterly regardless of the "*meum et tuum*," Crawford was in dealing with the property of this company, is further seen in the hypothecation of his contract for the purchase of the Block Coal company stock with Drexel, Morgan & Co. He got from the company $1,200,000 of first mortgage bonds and a like amount of stock as payment under his construction contract at the rate of $15,000 per mile, *counting this very twenty miles as part of the constructed road.* That was finally so recorded on February 18, 1884.

But on March 18, 1882, the record recites that his son, as treasurer, reported that there had been delivered to Crawford, to be accounted for under the construction contract, $1,000,000 first mortgage bonds, "and that said "Crawford had transferred to this company a contract in "writing for the sale of all the capital stock and assets of "the Chicago and Block Coal Railroad Company."

And that such action was approved by the directors.

The transaction, then, so far as the Block Coal Railroad Company-acquisition was concerned, amounted to this: Crawford received bonds of the Great Southern company from it, as payment for the Block Coal railroad, the contract for the purchase of the stock of which he transfers to the Great Southern company. Then he takes all the bonds thus obtained, all the Block Coal Railroad Company stock, *and the contract for the purchase of it*, and hypothecates them with Drexel, Morgan & Co. If there was anything the Great Southern company might be said to own at this time, it surely was this contract for the purchase of the Block Coal Railroad Company-stock. But Crawford, without even going through the form of having his directors give authority, reassigned that contract to Drexel, Morgan & Co. as his own property. The Great Southern company was thus out $300,000 of its first mortgage bonds with nothing whatever to show for them, or at the rate of $15,000 per mile for twenty miles of road. So that when Drexel, Morgan & Co. should sell the collaterals it must lose the twenty miles of railroad, and still have to pay its bonds given for the purchase price; and an equal amount of its capital stock had gone in the same way.

It is admitted by appellees that the money furnished by Drexel, Morgan & Co. was used in the construction of the road. But that went to enhance the value of the securities in their hands as pledgees, for the sole benefit of their debtor and pledgor, Henry Crawford.

All the labor done and materials furnished by appellees before or after that agreement and pledge, must also go to increase the value of those securities. That, too, without a remote possibility that the appellees could ever receive from the corporation a farthing on their claims.

The effect and purpose of that contract was thus described by Crawford:

" A. I don't understand that I put up any additional " security at all. I understand that by putting up the " $1,200,000 of stock of the Chicago and Great Southern " with them" [Drexel, Morgan & Co.], " and the $200,- " 000 additional bonds, I was simply putting up the iden- " tical security which was provided by the original con- " tract, because you will see that it expressly requires that " if any other stock or bonds are issued, that they have " got to go up, too; and it was simply a question as to " whether the property that was worth less than the se- " curities which they had already up should be repre- " sented by these or by the larger amount, *and they* " *simply wanted to tie us up and tie everybody up*, *so that* " *when they sold out the stuff which they had in collaterals*, " *that it would be selling out everything on earth that rep-* " *resented that company*." (Rec., 688.)

It is claimed by our adversaries, as a legal proposition, that in order to affect Drexel, Morgan & Co. by the equities existing between the appellees and Crawford, actual notice of the facts under which those equities arose must be brought home to Drexel, Morgan & Co. That constructive notice of such facts would not affect them as holders of the bonds in good faith. To this we reply:

1. That they *had* actual notice by the very contract which they entered into with Crawford.

2. That the principle contended for on behalf of appellant does not apply to the extent claimed.

Upon this question of notice, a case more directly applicable than any coming under our observation is one decided by this Court. It was the case of *Thomas, Trustee,* v. *Brownville, &c., R. R. Co.* (cited *ante*). In that case a bill was filed to foreclose a mortgage, executed by a railway company upon its property to secure the payment of certain bonds. At a certain stage in the proceedings, stockholders were allowed to intervene and defend. The defense was made upon the ground that the bonds were issued under a construction contract for the building of the road, and were fraudulent and void; first, because two of the board of directors who took part in making the construction contract were interested with the other parties in the contract; and, second, because other of the contractors, besides those two, had made an agreement, contemporaneous with the construction contract, with twelve of the shareholders of the railway company, to relieve the latter—as subscribers to the stock of this railway company—from the payment of any further assessments thereon, by paying out the stock and having the same assigned to them.

The names of the stockholders, relieved from stock liability by virtue of the construction contract, included all the directors of the railroad company, at the time the construction contract was made. The stock being worthless, the stockholders were liable to be called on to pay up a certain sum of money on account thereof. It was said by the Court (page 524) that, "the effect upon the "directors in making a construction contract with the "men who relieved them of their liability, two of them "being also parties in the construction contract, is readily "seen."

The Court having decided that the contract was voidable, it was then urged, on behalf of the complainant (appellant in this Court), that the bonds were negotiable instruments in the hands of innocent holders for value. This Court said (page 524 *et seq.*):

"The original contract being such that the contractors "can maintain no suit on it, the bonds which they re"ceived are affected with the same vice, and cannot be "enforced unless they are negotiable instruments in the "hands of innocent holders for value."

"This principle is set up and relied on to reverse the "decree on the ground that the bonds are in the hands of "the Burlington and Missouri River Railroad Company. "This company is no party to the suit, but it appears in "evidence that, while it has possession of these bonds, "*it did not receive them by any purchase in the ordinary* "*course of business.* They came into its possession as part "of a transaction in which it purchased the consolidated "Nebraska company's railroad, *and these bonds were* "*probably taken as security against their being used to in*"*jure the title.* It is also shown that, as further security "in the same direction, the Burlington and Missouri "Railroad Company yet retains $400,000 of the price of "the road, which it agreed to pay. Under these circum"stances we do not see that the company is in condition "to avail itself of the doctrine of *bona fide* holders for "value."

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VIII.

THE EQUITIES OF APPELLEES TO BE PAID OUT OF THE ASSETS OF THE CORPORATION, THE AMOUNTS OF THEIR RESPECTIVE CLAIMS, IN PREFERENCE TO HENRY CRAWFORD.

It is here proposed to briefly state the case of each of the appellees separately.

THE CLAIM OF THE CLEVELAND ROLLING MILL COMPANY.

That claim is for iron rails furnished by appellee under a memorandum contract, negotiated through a firm of brokers, Mr. Crawford acting for the railway company. (Rec., 793.) It was dated October 10, 1881. It was signed by the railway company as follows:

" Accepted:
" CHICAGO & GT. SOUTHERN RAILWAY CO.,
" By HENRY CRAWFORD."
(Rec., 862, 863, bottom and top pages.)

Appellee, under that contract, shipped the rails, which were laid in the road. (Rec., 804, 805.)

The deliveries began on November 14th, and were completed December 5, 1881. (Rec., 804, 805.)

The total value of the material was $52,278.33. There was paid on account, on March 24, 1883, $22,634.36, leaving a balance unpaid, not computing interest, of $29,643.97. The interest was left to be adjusted when the balance should be paid. (Rec., 795.)

Judgment was obtained against the railway company for the balance due on the account, including interest, on May 10, 1884, for the sum of $35,922, in the United States Circuit court sitting at Chicago, Illinois, where the principal office of the company was then located. (Rec., 352–354.)

Judgment was again recovered against the corporation in the Circuit court of Newton county, Indiana, wherein the road was located, on March 11, 1885, for $37,724.36, the suit having been brought on the former judgment, and recovered for the amount thereof, with added interest and costs. (Rec., 43.)

The master reported in favor of the claim, the original unpaid balance, without including any interest or costs whatever, the sum of $29,643.97. (Rec., 176.)

The Court, on exceptions by appellee on that question of interest, allowed the claim as reported, with legal interest from October 27, 1884, when the receiver was appointed, to the date of the order of payment, amounting in all to the sum of $33,112.32.

No exception or controversy is made by appellant over the amount.

The payment made on March 24, 1883, was by check drawn by Crawford on Drexel, Morgan & Co.

Mr. Crawford having testified that he had informed William Chisholm, president of the appellee-corporation, on an occasion when they were in the banking house of Drexel, Morgan & Co., of his efforts then being made to procure a loan on the bonds of the railway company, Mr. Chisholm, when testifying relative to his claim, was asked about that matter.

This is Mr. Chisholm's evidence: He stated that he had met Mr. Crawford at Drexel, Morgan & Co.'s office.

" Q. State what conversation occurred between you " and Mr. Crawford there with reference to this matter, " or what the conversation was? A. He stated that he " expected to get money from Drexel, Morgan & Co., " and as soon as he got it he would pay us money the " first.

" Q. Did he say anything about the bill—about its be- " ing correct or not? A. No, sir.

" Q. Nothing said about that? A. No, sir.

" Q. What did he tell you, if anything, with reference " to what his negotiations were with Drexel, Morgan & " Co.? A. He didn't tell me.

" Q. He has sworn in this case, in substance, on the " former reference, that he told you as follows: ' Right " in that connection I desire to state that while I was " making this negotiation with Drexel, Morgan & Co., " which probably occupied in all over a month, I saw " Mr. William Chisholm, president of the Cleveland " Rolling Mill Company, in Drexel, Morgan & Co.'s " office in New York, and told him just exactly what my " business there was, and the full and precise nature " of it. Later he got, at my earnest solicitation, twenty- " two thousand odd hundred dollars out of this very " Drexel, Morgan & Co. loan, on a check drawn on that " house.' I will ask you whether that is the interview " that he refers to, that you are now speaking about? A. " I think it is.

" Did you ever have any other interview there? A. " No, sir.

" Q. What did he tell you about the full and precise " nature of his business with Drexel, Morgan & Co.? A. " To get money to pay our bill.

" Q. What did he say about negotiating a loan on the

" bonds of this railroad? A. He didn't refer to it at all.
" Q. You are confident of that? A. Yes, sir."
(Rec., 799, 800.)

It will be seen that the claim of this appellee had accrued before the delivery of the $1,000,000 bonds to Crawford in the latter part of December, 1881. Mr. Butler, in his brief, says (page 6) this occurred "about the last "of December, 1881."

The special equity of this appellee then, lies in the fact, that its debt had accrued when Crawford took the bonds. Waiving all questions made in this case, applicable to all creditors, the proposition respecting this appellee's claim would be fairly stated as follows:

That where material was bought for the construction of a railway in the name and on the credit of the railway company, under a contract entered into on the part of the company by one who assumed to represent it and sign its name to the contract of purchase, and who was, in fact, in full control of the corporation as the beneficial owner of its property, such person cannot defeat payment of the claim of such creditor after it has accrued — and when the corporation has become insolvent—by obtaining a mortgage on all its property as security for his own advances. It seems to be unnecessary to cite authorities upon that proposition, other than are contained elsewhere in this brief.

THE CLAIM OF THE SMITH BRIDGE COMPANY.

The claim of this appellee was for the construction of two railway bridges, on the line of the road, under two separate contracts with the railroad company.

The first was entered into on October 26, 1882, and executed by the railway company, by H. Crawford, Jr. as secretary and treasurer. The contract, after reciting that payments were to be made each month upon estimates by the chief engineer of the railway company, less 10 per cent. to be retained until the bridge should be built, and the money due on such estimates to be paid on or about the 15th of each month, and the balance due thereon should be paid in accordance with the contract price of the bridge, " at which time the title of said bridge " is to vest in said party of the second part " (the railway company), " but during the construction of said bridge " and until the contract price shall have been paid the " the title of said bridge and material shall be and remain " in the party of the first part " (bridge company) " as " their individual property, and in default of payment of " the contract price of said bridge, party of the first part " *reserves the right* to remove said bridge and bridge " material."

The second contract was entered into July 24, 1883, and executed on the part of the railway company by Henry Crawford, president. That contract contains substantially the same provision relative to the title of the bridge remaining in the bridge company until payment therefor should be fully made. Crawford guaranteed the performance of both contracts on the part of the railway company. (Rec., 816–818.)

The work was completed, and about the amount due there is no question made by appellant. On the 26th day of January (it should be 25th), 1884, the balance of the indebtedness remaining unpaid, written notice was served by the bridge company upon the railway company, that it would retain possession and control of the bridges until paid for, as provided for in the contract. (Rec., 823.)

The work in the bridge built under the first contract, appears to have been commenced prior to July, 1883, and all work done prior to that time, except ten per cent. in the estimates, had been paid for, leaving a balance due of $20,975.24 without interest. (Rec., 810.)

On the 3d of April, 1884, Mr. Tolerton, as attorney of the bridge company, adjusted the amount due with Crawford, including interest for the sum of $21,630.54, for which amount Crawford gave his individual check, due thirty or forty days thereafter. (Rec., 812, 813.) That check, on presentation, was not paid by the bank, and was protested. (Rec., 822, 823.)

On the 4th of December, 1884, Tolerton had an interview with Messrs. Nickerson and Gage (the president and vice-president of the First National Bank of Chicago respectively), to whom he was introduced by Crawford, at which time he stated to them the character of the claim of his client, and gave to Gage copies of each contract. Gage stated that there was a syndicate organized which was negotiating for the bonds of the railway company; that they had not got them yet in their possession and control, but would get them about the middle of January, and would then be able to negotiate the bonds with the bridge company for their claims. Crawford's check was never paid, but remained in the possession of appellees at the time of the hearing before the master. The check was not taken as payment, but a receipt was given; that when the check was paid the receipt was to be valid. (Rec., 812–814.)

Tolerton having been told in the conversation with Messrs. Gage and Nickerson that appellant was the gentleman to see in relation to his claim, and the latter being out of the city (Chicago), on his (Tolerton's) return to

Toledo, the next day, December 5, 1884, wrote to appellant, also advising him of the indebtedness of the bridge company and of its claim of title to the bridges, and sent him a copy of the first contract. (Rec., 925 and 926.) On December 9th, appellant acknowledged the receipt of the letter, stating that within a few days he hoped to have made such progress in the Chicago and Great Southern matters as would enable him to look into the position of the Smith Bridge Company; that he had never seen the papers or thought much about the question until Tolerton's letter; that he would try and fix a date soon that Tolerton and himself could meet in Chicago and examine it. "In the meantime I presume there " is no need for any action for your protection, as the " road is in the hands of a receiver, and I could not take " any steps to weaken your position if I would, and I cer" tainly would not if I could." (Rec., 926, 927.)

The syndicate agreement, entered into after appellant had full notice of this appellee's claim and a copy of the agreement reserving the lien, provides especially for this claim to be paid by appellant out of the purchase money going to Crawford in the second order of priority. He was to pay for " bridges and other structures heretofore " built and put in place on said railway and essential to " the operation thereof, *but the title to which is not in said* " *railway company*, and which the court may decide must " be paid for in preference to said bonds." (Rec., 913.)

1. The contract shows that the sale of the bridges and bridge material was conditional.

And when there is such a sale the contract will be enforced against the company and mortgagees with notice.

This is expressly held in the following cases:

> *Pierce* v. *Emery*, 32 N. H., 484.
> *Haven* v. *Emery*, 33 N. H., 66.
> *Hunt* v. *Bay State Iron Co.*, 97 Mass., 279.

That the complainant, Porter, had notice, before he purchased the bonds and mortgage, of the conditional contract of the bridge company and of its title to the bridge, is clearly shown by his correspondence on December 9th with Tolerton, the attorney for the bridge company; and is also further shown by the recitals of the "syndicate contract," which especially mentions the bridges as a portion of the property of the railway company to which it had not yet obtained the legal title.

2. A railroad mortgage attaches to after-acquired property, subject to all existing equitable liens.

> Jones on Railway Securities, Sec. 142, *et seq.*
> *Fosdick* v. *Schall*, 9 Otto, 235.

When these bridges and the materials composing them became a part of the railway, they were then subject to this conditional sale, and the complainant's mortgage became a lien thereon, subject and inferior to the contract of the bridge company.

3. The decision in *Coe* v. *New Jersey Midland Railway Co.*, 31 N. J. Eq., 105, and the principles therein laid down, fully sustain and protect the claim of the bridge company in this action.

4. It is further to be noted that the testimony shows the bridge company never *voluntarily* parted with possession of the bridges. Upon their completion the company notified the president of the railway company in

writing that possession of the bridges would be retained until paid for. It matters not that the company has used these bridges, for if this use was without the consent of the bridge company it was not a legal possession, and the mortgagees of the railroad company could derive no benefit from it.

And in this respect also this case differs from the facts in a case on appeal from the United States Circuit Court for the district of Texas, recently decided by this Court.

5. It is of no consequence that the bridge company took the collateral guarantee of Henry Crawford for the purchase price, or that it took Crawford's guaranty for the performance of the contract.

Clarkson v. *Stevens*, 16 Otto, 505.

THE CLAIM OF VOLNEY Q. IRWIN.

It is admitted by appellant's counsel that Volney Q. Irwin's lien on the Chicago and Great Southern Railway for $11,815.70 is valid, and that it is senior to the mortgage or trust deed to New. (See brief of Mr. Butler, page 99, second paragraph.)

But it is claimed that New's alleged redemption destroyed Irwin's lien. We have two answers to make to this:

1. That the Indiana redemption law is wholly inapplicable to a case like this; and,

2. If it should be held otherwise, the Indiana redemption law was never complied with by New so as to destroy Irwin's lien.

As to the first point: If a judgment creditor should redeem under section 772, R. S. 1881, he could not levy an execution on the property sold at Irwin's sale. This section can be applied to property only that is subject to sale on ordinary executions. There can be no judgment lien on the part of an indivisible whole, and there can be no partition of a railroad.

The section of the Indiana mechanic's lien law of 1881 under which Irwin acquired his lien is as follows:

"Sec. 12. All persons, who by contract with any rail-"road corporation whose road is not in operation over the "whole line thereof, or by contract with the lessee of "such corporation, shall perform labor or furnish material "for any such corporation, or the lessee thereof, in the "way of grading, building embankments or making ex-"cavations for the track of any such railroadcorporation, or "who shall build or repair bridges or trestle work for any "such railroad corporation, or the lessee thereof, shall "have a lien upon such grading, embankment or excava-"tion, and upon so much of the track of such railroad as "is covered by such grading, embankment, or excava-"tion, and upon such bridges or trestle work as they "may have built or repaired, pursuant to any contract "made with such corporation or lessee thereof, upon so "much of the track of such corporation as is covered by "such bridges or trestle work; and any sub-contractor or "laborer, if, at or before the time he furnished materials "or does labor, shall notify such corporation or lessee "thereof, or its agent, that he is furnishing the material "or doing the work for the contractor or sub-contractor, "may also have such lien."

Acts 1883, Sup. to R. S. 1881, Sec. 6,962.

Irwin's lien was on the "grading, embankments and "excavations" made by him and the superstructure built thereon, and this work is not subject to execution.

Wood's Field on Corporations, Sec. 373.
Gue v. *Canal Co.*, 24 Howard, 263.
Coe v. *Railroad Co.*, 10 Ohio St., 372.
Hatcher v. *T., W. & W. R. Co.*, 62 Ill., 477.
Stewart v. *Jones*, 40 Mo., 140.
Seymour v. *Milford &c.*, 10 Ohio, 476.
Wood v. *Turnpike Co.*, 24 Cal., 478.

This work not being subject to sale on execution, a judgment creditor could not redeem it and have it sold on an execution in the nature of a *venditioni exponas*, as provided in Sec. 773 of the redemption law. This law is not adapted, and was never intended to apply, to such a case.

It will be seen that Sec. 771 provides that a judgment, creditor can redeem only when his judgment is a lien on the property sold. A judgment is not a lien on railroad "embankments, cuts and excavations," as shown by the authorities above.

Another difficulty is presented in the fact that the mechanics' lien law, under which Irwin acquired his lien, provides that this lien can be acquired only on the embankments, cuts and excavations on *unfinished* roads, or to use the words of the law, "roads not in operation over the whole line." This provision was evidently made to prevent lien-holders from interfering with the running of trains after the whole line of road should be put in operation. But if the grading, embankments and excavations on an unfinished road may be redeemed by a judgment creditor, this provision in behalf of the railroad company could be rendered nugatory.

A creditor could acquire a judgment lien after the completion of the road, redeem from the sale on the mechanics' lien, and stop trains from running over the "embank-"ments, cuts and excavations" redeemed and bought in by him on his execution "in the nature of a *venditioni ex-"ponas*."

A further consideration showing that the law was never intended to be applied to railroad "embankments, "fills and excavations," is that the mechanics' lien law was passed long subsequent to the redemption law, and that at the time the redemption law was enacted, in 1881, railroad "embankments, fills and excavations" were not subject to sale on decrees foreclosing mechanics' liens nor any other process of a court.

Again, if it had been decided that Irwin's lien was junior to New's mortgage, could Irwin, under the Indiana redemption law, have redeemed the "embankments, fills "and excavations" from a sale on foreclosure of the mortgage? If so, by what process?

As to the other point: Sec. 774 of the Indiana redemption law provides that where there is a redemption by a mortgagee, he shall retain a lien on the real estate so redeemed by him, as of the date of the judgment on which such sale was made, and may, *at the end of a year* from such sale, enforce the same in the suit to foreclose or enforce his own lien, or by an independent action; and any sale of said real estate in pursuance thereof shall be absolute, etc.

Irwin's sale was on the 12th of July, 1884, and Porter commenced his foreclosure proceeding on the 9th of March, 1885, four months before the expiration of the year suceeding Irwin's sale. There was, therefore, no attempt to enforce this lien in Porter's foreclosure, and could not have been, for the time had not arrived when he could foreclose it. The sale of the road was made on New's mortgage and nothing else. The fact that New had attempted to redeem from Irwin's sale is not mentioned in Porter's bill, nor does the decree mention it. Porter can therefore base no right on the foreclosure of Irwin's statutory lien, and this attempted redemption amounts only to a payment of $500 on Irwin's judgment, and it was so treated by the master in his report. If Porter ever had a right to have the road sold on his own and Irwin's lien jointly, he abandoned that right by suing on his mortgage before the year was up, and selling on his mortgage only. His sale was based solely on a junior lien, and the sale could give him no other title than one subject to the prior lien. His title cannot reach further back than the date of the lien on which it is based.

The railroad company itself had a right to redeem at any time within a year from Irwin's sale, and if it had done so the sale would have been vacated, and Irwin's lien for the whole of his claim would have remained in force and he could have sold again. (See Sec. 768, and Sec. 770, Rev. St. 1881.)

It is claimed, upon general principles, that any redemption by a junior lien-holder must be for his own benefit solely, and that property redeemed by such lien-holder is relieved of the lien of the original judgment. But the decisions in Indiana, under former redemption laws, have been uniformly otherwise.

Green v. *Doan*, 57 Ind., 186.
Teal v. *Hinchman*, 69 Ind., 379.
Taggart v. *McKenzie*, 85 Ind., 397.

The validity of Irwin's lien and its priority being admitted, and the road having been sold, freed from all liens, we insist that he is entitled to payment out of the fund in court, and we ask that the decree in his favor be affirmed.

THE CLAIM OF CRERAR, ADAMS & COMPANY.

The claim of these appellees accrued for supplies furnished to the railway company from the 12th day of January, 1883, to the 25th of October, 1884, amounting in all to the sum of $7,809.94, on account of which nothing has ever been paid. The master, on the 31st of August, 1886, reported the claim in favor of these appellees at the above amount. The same was allowed by the Court at that amount, with interest to be added from the 27th day of October, 1884, when the receiver was appointed, making altogether a total sum of $8,723.71. It is not claimed by appellant that this indebtedness is not justly due, and that the materials furnished were not furnished at reasonable prices, and no objection is made to the justness of the claim except upon the question of priority of lien. (Rec., 91-95, 193, 194.)

It is not contended that any member of these appellees' firm ever had any knowledge of any character about the transactions involved in this cause.

And it may be stated here, that there is no evidence that any of the appellees knew the terms of Crawford's construction contract, or that any bonds had been issued to him thereunder, or that he claimed that the million dollars of bonds belonged to him, until about the time this litigation commenced.

THE CLAIM OF THE BESSEMER STEEL COMPANY.

The appellant's solicitors, on page 53 of Mr. Butler's brief, say: "As has been shown in our statement of facts, these "claims accrued after the mortgage had been executed "and recorded, and after one million dollars of the bonds "secured thereby had been issued and pledged to innocent, good-faith holders, for value." (We deny that any holder of the bonds occupied this legal relation.)

But, conceding the position here assumed, it is the contention of the appellee, The Bessemer Steel Company, that it is entitled to priority of allowance out of the fund realized from the sale, under the facts respecting its claim as shown by the record.

Upon the appellant's hypothesis, the rails furnished by the Bessemer Steel Company are subject to the lien of the mortgage in virtue of the after-acquired property clause therein. The question then presented is: What is the nature and condition of such after-acquired property; and what character of title did the mortgagor company have in any such after acquired property?

"A mortgage intended to cover after-acquired prop-"erty can only attach itself to such property in the condi-"tion in which it comes into the mortgagor's hands. If "that property is already subject to mortgages or other "liens, the general mortgage does not displace them "though they may be junior to it in point of time. It "only attaches to such interest as the mortgagor acquires; "and if he purchase property and give a mortgage for "the purchase money, the deed which he receives and "the mortgage which he gives are regarded as one trans-"action, and no general lien impending over him, whether

"in the shape of a general mortgage, or judgment, or
"recognizance, can displace such mortgage for purchase
"money. And in such cases a failure to register the mortgage for purchase money makes no difference. It does
"not come within the reason of the registry laws. These
"laws are intended for the protection of subsequent, not
"prior, purchasers and creditors."

United States v. *New Orleans Railroad*, 12 Wallace, 365.

The rails sold by the Bessemer Steel Company to the railway company, were to be delivered F. O. B., at Pittsburgh, and the terms of payment therefor were cash on delivery of bills of lading, with inspector's certificate by sight draft. (Rec., 771, 772.)

Under this contract two shipments of rails were made, and a draft for the price of the rails in each shipment with the bill of lading and inspector's certificate attached was presented to the railway company before the shipments had reached their destination. The drafts were protested, and the carrier was notified not to deliver the rails. They were not delivered. But it was arranged that they should be unloaded and placed in store with one D. H. Conklin, to be held subject to the order of the steel company. (Rec., 762-773.)

The delivery of the rails on board the cars at Pittsburgh, was a constructive delivery, which made the sale consummate and vested the property in the purchaser and the retention of the bill of lading kept the physical possession of the rails in the shipper, and so authorized the shipper to hold a vendor's lien for the price. There was such a formal, symbolical or constructive delivery as would vest in the vendee the technical legal title of the rails, but the retention of physical possession secured to the vendor its lien for the purchase price. These principles are elementary.

Arnold v. *Delano*, 4 Cush., 33.

When the rails were unloaded and placed in store they were put in charge of a bailee who held possession for the Bessemer Steel Company, and subject to its order, and thereby its lien was still preserved. The technical title of the property was in the railway company, but it was charged with the lien for the purchase price, which the retention of physical possession at once created and continued.

Several months after the rails had so been placed in store, the railway company took them from the place of storage and laid them in its track. The Bessemer Steel Company had not before such removal of the rails ordered the bailee to part with their possession, and it had not in any way authorized the railway company to lay the rails in its track. Not only was no consent given for the removal of the rails, by the steel company, but it had no knowledge of such fact until several months after it had transpired. (Rec., 770, 771.)

It thus appears that in fraud of the rights of the Bessemer Steel Company it was deprived of the physical possession of the rails by the act of the railway company, and as the rights of the mortgagee, in respect of this after-acquired property cannot be greater than the rights of the mortgagor, the question presented is, what under these facts were the rights of the mortgagor? Certainly it could not by its wrongful act add to its rights or take from the rights of the steel company. It is true that the evidence of its lien—physical possession—was gone from the steel company, but the loss of this evidence was by the act of the railway company, the only person whom it is necessary here to charge with notice of the existence of the lien. Under these circumstances it is submitted the rails went into the track subject to the lien of the steel company for the purchase price.

It is thus evident that it was the purpose of the steel company to keep the rails sold by it detached from the body of the railway property, and to hold them as tangible property, independent of the railroad proper. This intent was known to and acquiesced in by the railroad company. It is submitted that herein is the distinction between the facts of this case and the facts of the case of the *Galveston Railroad* v. *Cowdrey*, 11 Wall., 459, and the cases which follow it. In those cases, with the consent of the vendor, the rails were attached to and became part of the railroad, with an understanding that the vendor should hold it as upon a conditional sale, or as by a first mortgage upon that specific property. When the rails became thus attached to the railroad property they formed a part of the unit, the railroad, and the sellers of the rails were not permitted to break up the integer, a railroad, thus formed with their consent. To avoid the consequences of such a consent, the steel company here held the rails in its own possession, apart from the railroad and subject to its order.

It is insisted by appellant's counsel, on page 76 of their brief, that the acceptance of a part of the purchase price by the steel company after the rails had been placed in the track, and after it had knowledge of such fact, constituted a waiver of the wrongful act of the company in taking the rails, and was an acknowledgment of the rightful possession of the rails by the railway company. We conceive that the rule of pleading under which a tort may be waived and assumpsit maintained, or any general principle of law analogous to this rule can have no application under the facts here. Confessedly, the rails were taken from the physical possession of the steel company in fraud of its rights, and this by the act of the railway company. The rails were put in the line of the railroad, and so became attached to the property. Their identification would have been difficult, and we submit that the recovery of them by an action in replevin could not have been had in the State of Indiana under the ruling in the case of *Ricketts* v. *Dorrel*, 55 Ind., 470. And again, the time of the taking of the rails is shown by the record to have been quite uncertain, and even if a statutory lien might have been placed of record, a dispute could well have arisen whether it had been taken in time, and besides, we know of no statute of Indiana under which the steel company could have in this case secured a statutory lien after the rails had been attached to the railroad track in the railway company's right of way, and thus become a part of the realty. The steel company, so far as the recovery of the rails was concerned, by the character of the property itself, by the position of the parties in interest, and by the situation of affairs, was placed at every disadvantage. Practically, it was remediless to recover its former position of a lien-holder protecting his lien by physical possession. This status was the result of the fraud of the railway company, and it does not now lie in its mouth to say that acceptance of the part of the purchase money was a waiver of the fraud. "Where a con-" firmation of fraud is relied on as a defense to a suit for" relief from a fraud clearly established, the confirmation" must stand upon the clearest evidence. The confirming" act must be so disconnected with the previous trans-

"action as to leave the defrauded party the complete "power of determining, as upon an original act, whether "he will do it or not. The parties must be at arm's "length and stand on equal terms."

Bigelow on Fraud, p. 187.
Montgomery v. *Pickering*, 116 Mass., 227.
Moxon v. *Payne*, L. R., 8 Chancery, 881.

It is further insisted by appellant's counsel on page 77 of their brief that the lien was waived by the steel company's taking the obligation of a third party. The obligation here claimed to have been received is said by appellant's counsel to have been the personal obligation of Henry Crawford, and reference is made to page 773 of the record. Without discussing the purport of the letter of Henry Crawford of March 30, 1882, referred to by appellant's counsel and found on page 773 of the record, we submit that whatever Mr. Crawford might say as a business man of a personal obligation contained in that letter, as a matter of law there is no consideration in that letter or in the record for the personal promise of Mr. Crawford. In other words, the guaranty of Mr. Crawford, if the letter referred to be a guaranty, is without consideration, and could not be enforced. It is to be noted that the contract of sale of the rails was consummated October 3, 1881, and that the rails were delivered on board the cars in January, 1882. Mr. Crawford's letter not being concurrent with either act, a consideration for the guaranty cannot be found in the contract between the principals.

The taking of an invalid security is not a waiver of a vendor's lien.

Bakes v. *Gilbert*, 93 Ind., p. 70.

Note: What is above said with respect to the separate claims of several of the appellees was proposed by other counsel especially representing such appellees, and has been here inserted at their request.

IX.

THE EFFECT OF THE SYNDICATE AGREEMENT OF DECEMBER 26, 1884.

The following are claimed to be the legal results flowing from the making and carrying out of the syndicate agreement:

First. That whatever rights would have accrued to appellant and Samuel M. Nickerson, in the matter of being subrogated to the position occupied by Drexel, Morgan & Co. relative to the securities, were entirely lost to them by the syndicate agreement.

Second. That agreement was a purchase by appellant for his syndicate of all the securities directly from Henry Crawford upon an entirely new arrangement, which by its terms abrogated the agreements of June 25th, of Crawford, appellant, and Nickerson, respectively, with Drexel, Morgan & Co.

Third. That in making the purchase of the securities directly from Henry Crawford, appellant reserved all of the purchase price except the amount of Crawford's indebtedness to Drexel, Morgan & Co., to be held by him, appellant, as a fund, out of which to pay the debts of the railway company due to appellees and other creditors.

Fourth. That inasmuch as whatever of this fund is not paid to appellees and other creditors of the railway company must go to Henry Crawford, the controversy here is between Henry Crawford and appellees. and is to be determined *on its merits* by the Court, the same as if Mr. Crawford himself was before the Court insisting upon a priority of lien for the mortgage and bonds, to the extent of such surplus in the hands of appellant as a mere stakeholder.

Fifth. Appellant cannot wage that controversy on this appeal, because he is not interested therein.

Of these in their order:

1. The entire amount of the indebtedness of Crawford to Drexel, Morgan & Co., on January 15, 1885, representing the principal and interest of his notes, was $392,-363.24.

By the payment of that amount, appellant and Nickerson would have been entitled, as between Drexel, Morgan & Co. and themselves, to the delivery of the securities under the contract of June 25th.

That transfer of the securities, according to the *express terms* of the two contracts of June 25th, would have been by way of a purchase. In the Crawford contract it is recited that said Crawford "further agrees hat the said "Drexel, Morgan & Company may accept the proposi-"tion of said Samuel M. Nickerson and H. H. Porter *for "the purchase of the said securities;*" it further provides, that if Crawford should not have paid his indebtedness to Drexel, Morgan & Co. in sixty days from June 20, 1884, the latter might, "at the expiration of said period, *sell, "assign, transfer and deliver* the said securities to the "said Nickerson and Porter for an amount equal to said "indebtedness," with interest and expenses, without further notice to him. (Rec., 907.)

In the agreement of the appellant and Nickerson, it is recited that they "hereby jointly and severally agree in "consideration thereof to *purchase* the securities as "above," in case Crawford's indebtedness should remain unpaid at the end of the sixty days; and they further agree "to pay the said Drexel, Morgan & Co. in cash "for the said securities the amount of said indebtedness "with interest and expenses on or before the 15th day of "January, 1885." (Rec., 908.)

In that situation, and with the legal liability to pay a sum less than $400,000, appellant, for the benefit of Nickerson and other members of the syndicate, made a purchase outright of those same securities, including the Union Coal Company's stock (which appellant himself testified he considered worth not to exceed $40,000), for what in effect amounted to $750,000 (or $710,000 after deducting the value of the coal company's stock), instead of the original purchase price with Drexel, Morgan & Co., of less than $400,000. It would seem that the significant fact of appellant agreeing to pay over $300,000 more than he and Nickerson were obligated to pay by the contract of June 25th ought to settle the question as to whether the syndicate contract was what Mr. Nickerson termed it, a "new deal," or, in other words, a purchase of the securities *directly from Henry Crawford*, ignoring and treating as never having been made the contracts of June 25th. That is what they specifically in the syndicate agreement declared should be the effect of that instrument by the 7th section thereof. (Rec., 915.) The syndicate agreement further provided that out of the first $500,000 of purchase money there should be applied an amount sufficient for the "*satisfaction and cancellation*" of Crawford's notes to Drexel, Morgan & Co. It is further recited that that indebtedness "has been transferred to and now belongs to" appellant. (Rec., 912, 913.)

What was done under the syndicate agreement shows that there was no intention or purpose on the part of appellant or Nickerson to keep alive the indebtedness of Henry Crawford to Drexel, Morgan & Co., or to take title to the securities under the contracts of June 25.

On the 12th of January, 1885, appellant wrote to Drexel, Morgan & Co., remitting to them the amount of Crawford's indebtedness and requesting them to send to him Crawford's notes canceled.

On the 14th of the same month they sent to appellant Crawford's notes canceled; and on the 15th, Crawford himself, at the foot of the syndicate agreement, endorsed an acknowledgment that appellant had that day paid for his account under the syndicate agreement the sum of $392,363.24, "by payment of my indebtedness to Drexel, "Morgan & Company to that amount."

The only answer that has been made on behalf of appellant is that the syndicate contract was but a means of protecting the First National Bank.

That claim cannot be seriously set up in view of what the situation was and what was actually done. Crawford owed the bank nearly $300,000. The bank had in pledge as collateral to that indebtedness securities whose market value, on the 26th of December, was at the lowest amount, fixed by the bank's officers, $116,000. The bank also had a second lien upon the securities with Drexel, Morgan & Co. By realizing on the securities which the bank had in its own custody, at their market value on the 26th of December, it would have paid Crawford's indebtedness to the bank down to the amount of $182,000.

Then, assuming that what the appellant testified was the intention of himself and Nickerson, to try to secure the payment of the amount due to the bank, "in good commercial honor," and treating appellant and Nickerson as acting as well for the bank as for their syndicate, the balance of Crawford's indebtedness to the bank of $182,000 was second in lien to the indebtedness due to Drexel, Morgan & Co. of about $398,000. So that the sum of $580,000 would have paid the balance due the bank and Drexel, Morgan & Co. Instead of doing that, however, they "protected the bank" under the syndicate agreement (and by the subsequent assignment by Crawford to the bank of his interest therein), by increasing the purchase price of the securities, then in the hands of Drexel, Morgan & Co., from $398,000 to $710,000, and then turned about and gave up to Crawford the collateral securities which the bank had of the actual market value of $116,000 and took in lieu thereof whatever might be left for Crawford of the purchase money after the payment of the indebtedness to Drexel, Morgan & Co., and all claims that should be established against the railroad property, or the proceeds arising from the sale thereof ahead of the bonds, and after the payment of the expenses of the receivership up to the 15th of the succeeding month.

The "protection" which this bank received in this transaction was to surrender securities (upon which it could have realized, at once, more than one-third the amount of its debtor's obligation) and receive in pledge a contingent interest in a speculative venture upon the property involved in which, it is claimed, it had a second lien before the transaction took place.

Treating appellant and Nickerson as sureties for Crawford's debt to Drexel, Morgan & Co., they would not have been entitled to be subrogated to the equities of the latter until they had paid the debt.

Brandt on Suretyship and Guaranty, Sec. 266, pp. 359, 360.

Before they had paid that debt or any part of it, the syndicate agreement was made. Therefore it is submitted that whatever inchoate rights appellant and Nickerson had to the securities (as purchasers from Drexel, Morgan & Co., or as sureties for fhe debt of Crawford) by their own act were lost when they entered into the syndicate agreement.

Fresh v. *Gilson et. al.*, 16 Peters, 327.

2. *The legal effect of the syndicate agreement was a purchase by appellant directly from Henry Crawford.*

It is very difficult to elaborate on the above proposition. When parties have entered into a solemn written agreement, and that agreement, during the process of carrying it into effect, is brought before the courts, and it is in no wise obscure, and no fraud or mistake is charged as to its execution, about all we can say with reference to it is what courts are obliged to say in regard to all contracts, "*ita lex scripta.*"

The very first section of the agreement in question recites that Crawford agrees: "To sell and hereby sells to "the 'syndicate' twelve hundred (1,200) of the first mortgage bonds of the Chicago and Great Southern Railway "Company, *owned by him.*" (Rec., 911, 912.) He also agrees to deliver the same to appellant, together with the stock, within twenty days from date. Various guaranties are taken from him in the contract, all proceeding upon the fact of Crawford's ownership of the securities sold. The purchase money, except so far as will be required to pay off liens upon the property represented by these securities prior to the latter, it is provided, shall be paid to Crawford as seller. That contract, thus entered into, and even now in process of being carried out by the parties to it, it is submitted, constitutes for appellant, one of those parties, the law of this case *as to him.* Attempt is made, in the briefs of counsel for appellant, to lightly pass over the provisions of this agreement. But unless that agreement shall stand, appellant had no right in this case, as sole complainant and bondholder, to bring the suit for foreclosure of the mortgage.

This syndicate agreement is appellant's sole muniment of title in this case.

On the same day of its execution, Crawford assigned all the interest reserved for him in the contract to the First National Bank. Appellant endorsed on that contract of assignment his acceptance of notice "*and of its* " *terms.*"

Amongst the terms of the agreement of assignment is a recital that Crawford "is the owner of " certain first mortgage bonds of the Chicago and " Great Southern Railway Company, amounting in " the aggregate to twelve hundred thousand dollars, " and is also the owner of certain stock of said " railway company of the par value of twelve hun- " dred thousand dollars." It recites further that Crawford "*was* indebted to Drexel, Morgan & Co., of New " York;" and further that for such indebtedness they " *held* the said bonds and stock." It is further recited that Crawford "desires to sell said bonds and stock of " the Chicago and Great Southern Railway Company to

" Henry H. Porter and his associates, who have agreed, " *as part of the purchase money, to cancel and satisfy the* " *notes* given by the party of the first part to Drexel, " Morgan & Co., as aforesaid."

3. *The amounts in controversy on these appeals are part of appellant's purchase price of the securities reserved by him to pay either to Henry Crawford or to appellees.*

The second, third and fourth paragraphs of section 3 and sections 4 and 5 are the portions of the syndicate agreement referring to this question. Those paragraphs provide that out of the $500,000 purchase money for the securities (to be first paid) after the payment to Drexel, Morgan & Co., the amount of Crawford's indebtedness, appellant should pay and clear off all claims against the railway company which might be decided by the court—in the foreclosure proceedings contemplated—to be liens upon the railway property, paramount to the liens of the bonds and interest coupons thereon, or which the court might decide should be equitably payable out of the proceeds of the sale of the railway, prior to any payment of the bonds or coupons, and also all indebtedness incurred by the receiver prior to January 15, 1885, which should not be paid out of moneys earned in the operation of the road prior to that time. That then, if those claims should exceed the sum of $100,000 (being a little less than the amount that would be left out of the $500,000 after paying Drexel, Morgan & Co.), appellant for his syndicate had the right to apply, out of the proceeds of the third interest in the securities retained by Crawford (but to remain in appellant's possession and control) upon any excess above the $100,000, in payment of such claims as should by the court be decided to be prior to the lien of the bonds and coupons. It is considered unnecessary to enlarge upon this point for the same reason given above, viz.: that appellant and Crawford and his assignee, the First National Bank, agreed in writing that the things mentioned should be done, and no question is made as to the binding obligation of that agreement upon them.

4. *The real controversy here is between Henry Crawford and the First National Bank, on the one hand, and appellees on the other, and should be determined accordingly.*

In the brief and argument, which will be filed herewith in support of the motions on behalf of appellees, to dismiss the appeals (at pages 32 to 37 and 62 to 65) is contained all that it is desired to say on this question, and which may be summed up in a single sentence: That when, on the 5th of April, 1886, appellant had received, at the hands of the Circuit court, title to and possession of the railway property, freed from all mortgages, bonds, liens and claims of every sort, and had been paid back the sum of $157,884.64 (of which over $150,000 had been expended by him through the medium of the Court in the betterment of this property for the benefit of the syndicate), neither he nor his syndicate had any further interest in the balance of the proceeds of sale, in the registry of the Court.

5. *Appellant, having no interest in the controversy presented by these appeals, ought not to be permitted to further carry them on.*

Appellant prayed these appeals, as "*complainant*" in the cause. As such complainant, and representing the syndicate and no other parties, under the cases cited in the brief and argument on appellees' motions to dismiss the appeals, (at page 63), he has no right to further pursue the litigation for the benefit of Henry Crawford. Had Henry Crawford and The First National Bank been parties to the suit in the Circuit court, their right to these appeals, *so far as this question of interest is concerned*, would have been clear. Except for their knowledge of, and acquiscence in, the proceedings of the Circuit court, whatever that Court did would not conclude them, if the fund in controversy is to be treated—as appellant's counsel claim—as a court fund, irrespective of the former decree of February 16.

X.

BY THE PURCHASE OF THE SECURITIES ON DECEMBER 26, 1884, UNDER THE SYNDICATE AGREEMENT, APPELLANT WAS CHARGED WITH FULL NOTICE OF ALL THE FACTS, FROM WHICH THE EQUITIES OF APPELLEES AGAINST HENRY CRAWFORD AND THE BONDS IN SAID SUIT ARISE.

Appellant will be presumed to have had knowledge of the contents of the syndicate agreement, when he made it, and of the facts therein recited.

Swift v. *Smith*, 102 U. S. (12 Otto), 442 (see page 448).

He therefore knew the following facts recited in the syndicate agreement:

1st. Crawford's construction contract and its contents.

2d. Crawford's control over the railway company, involved in his obligation to procure the cancellation of his construction contract with the corporation.

3d. The existence of a large amount of indebtedness against the company, of which $100,000 and more might be equitably entitled to preference in payment out of the proceeds of sale of the property ahead of the first mortgage bonds.

4th. That there were bridges on the line of the railway and other structures, "the title to which is" (was) "not in said railway company."

We do not understand it to be denied that on and before December 26, 1884, appellant, or Nickerson, his chief associate in the syndicate, one or both, knew fully the whole situation, the origin and history of this railway company, its property, and the securities representing the same, and Crawford's connection therewith.

THE FIRST NATIONAL BANK ACQUIRED NO BETTER RIGHTS AGAINST APPELLEES BY THE ASSIGNMENT OF CRAWFORD'S INTEREST IN THE SYNDICATE AGREEMENT THAN CRAWFORD HIMSELF HAD.

See *Colebrooke* on Collateral Securities, p. 568 *et seq.*, and § 422.

To like effect:

Cowdry v. *Vandenbrough*, 101 U. S., 522.
Judson v. *Corcoran*, 17 How., 612.
Wickham v. *Morehouse*, 16 Fed. Rep., 324.

XI.

THE EQUITIES OF APPELLEES TO BE PAID THE AMOUNTS DUE THEM, RESPECTIVELY, AS DECREED BY THE CIRCUIT COURT, OUT OF THE FUND IN CONTROVERSY, ARE SUPERIOR TO THOSE OF APPELLANT'S, AS THE NOMINAL PARTY TO THIS APPEAL, OR TO THOSE OF HENRY CRAWFORD, THE REAL PARTY.

Treating the fund in controversy, as simply a court fund, arising from the sale of all the property of an insolvent railway corporation, it is submitted that appellees have the prior right in equity, as against the appellant, or Henry Crawford, and this because:

First. Appellees did the work and furnished the materials represented by their claims in the construction of this railway, trusting to the property and assets of the corporation for payment, which they had a right to do.

Second. Because it was the moral and legal duty of Henry Crawford, in view of his relations to and control over the corporation, to pay the claims of appellees.

Third. Henry Crawford had, by his own contract with the corporation, bound himself to pay these claims, as a condition to receiving any securities of the corporation whatever.

Fourth. To allow Henry Crawford a security on the property of the corporation ahead of, or in participation with, these creditors, until their claims shall be paid, would be to allow a debtor to share with his creditors in his own insolvent estate.

Fifth. Appellant is in no better position than Crawford, and on account of the receipt and ownership by him of a large amount of unpaid capital stock, as between himself and appellees, a stronger equity exists in behalf of the latter than against Crawford himself.

EQUITY LOOKS THROUGH ALL FORMS TO THE REAL SUBSTANCE OF THINGS.

It is clear that appellant acquired no superior rights to those held by Mr. Crawford, and that the case must be determined by the same rules of law as if he had filed the bill himself. It is not seriously insisted and cannot be maintained that the construction contract is valid.

Wardell v. *Railroad Co.* (*ante*).

But it is insisted by appellant that, nevertheless, he is entitled to a priority of lien and payment over the appellees to the amount expended by Mr. Crawford in constructing the road; and that the mortgages must stand as against them for that sum. It is believed this position is fallacious. And this leads to the inquiry as to what are the respective rights of the parties to these appeals against the railway property?

It must be conceded that after June 23, 1881, Crawford believed and acted upon the belief that he was the owner of all the valid stock of both corporations. While Foster retained $10,000 in the Chicago and Great Southern, Crawford regarded this as valueless, for he says: "I may say very frankly that it never had any "value in my eyes until I was compelled to buy it in "March, 1882." And then he believed that it had not been issued for an adequate consideration, but he felt compelled to purchase it as a matter of business, in order that he might secure an immediate meeting of the old board of directors to the end that they should resign, in pursuance of the terms of his contract of June 23, 1881, and enable him to make a board of his own. At all times after June 23, 1881, he treated the property as his own. "I went in and furnished money at first, simply "because I was acting under the impression that I prac-"tically owned that piece of property."

Now, while in the legal sense a corporation is the owner of its franchises and property attaching thereto, yet in a broader sense, as stated by Justice MILLER in *Sawyer* v. *Hoag*, 17 Wall., 623, the stockholders own the corporation. And it follows that when one person owns all the stock, in equity at least, such person owns the corporation itself. Now the real ownership being in Crawford, as the sole proprietor of the corporation, it must be admitted that he obtained no greater rights over the property as against present or future claims for labor and supplies put in the road than if he had been vested with the legal title. For the purposes of this case he must be treated as an owner. He himself likens his proprietorship to that of a "corporation sole." He contracted in the corporate name; he put in his own means, without agreement, note or other obligation. He was, by virtue of his sole ownership of the stock of the legal creature, the owner of everything held by that creature as entirely in equity as if the fictitious person did not exist. And, while laborers and supply men might be limited in their demands for payment to the property of the company, yet, as against that property, these demands stand upon the same footing as if the legal title had rested in Crawford independently of the intermediate corporation. This artificial body was but the representative of its sole proprietor, and existed for his benefit. His dominion was as complete, through the agency of the stock, as if he had held title by deed. In that case his interest, in equity, would be subject to the claims of those who, by their labor and materials, added value to his property. Is it less in the present case? In equity creditors are held to have a paramount interest in their debtor's property to the amount of their claims, superior to any interest of the debtor.

Now, Crawford became practically the absolute owner in June, 1881. In September following he contracted, in the corporation's name, with the Bessemer Steel Company and in October with the Cleveland Rolling Mill Company. On November 9, 1881, he contracted with Irwin for grading. At the same time he was pushing the work, and paying for it himself. Now, in what capacity was he acting? He was not a lender. He was not a contractor. So that the position most favorable to him is to say he was acting in the capacity of the sole or dominant stockholder; otherwise it follows that he was advancing money as a volunteer.

Assuming, then, for the time, that his payments were made as sole stockholder, we come next to the fact that in November, 1881, the corporation sought to place a mortgage on its entire property then and thereafter to be acquired, to secure its bonds to be thereafter issued, and which bonds in December following came into the possession of Mr. Crawford. The appellant's claim is, that Crawford took and received these bonds to reimburse him for money advanced and to be thereafter advanced for construction and equipment of the road; and to pay for the Block Coal road thereafter to be acquired by consolidation. As he owned the entire stock of that road also, when consolidation should take place, he would still retain the entire ownership of the consolidated franchises and property in precisely the same manner as he held the

Chicago and Great Southern, and as the two were to become a unified property, it can not in anywise alter the legal question under consideration.

Returning now to the discussion; it appears that New, as trustee, placed all the bonds in the possession of Foster, and he of Mr. Crawford. And Mr. Crawford being the sole bondholder, New was trustee for him only. So that, in short, Mr. Crawford's property was mortgaged to his own trustee for his own benefit. Now the question is, will equity permit the sole stockholder and owner of a corporation in this manner to gain a preferential lien over the unpaid claims of laborers and supply men, who, by their labor and materials helped to produce the property itself and give the bonds their value? Conceding for the purpose of the immediate discussion, that the corporate entity might make a mortgage to its sole proprietor, either directly, or through a trustee to secure his present or future advances, which would bind the corporation, the precise question here is, what effect, if any, has it upon the unpaid demands of its present or future creditors?

Applying the wholesome rule announced by the Court in *Sawyer* v. *Hoag* (*ante* p. 87), to the present case, it is manifest that Crawford could not directly or indirectly secure a specific lien upon the property and franchises of the road superior and paramount to the unpaid claims of laborers and supply men. Such a shareholder, like any other owner, is postponed to the creditors of the corporation. An owner can not, by vesting the title of his property in the name of another person, natural or artificial, defy or avoid the rule that creditors who built up that property, have a right of payment thereout superior and paramount to any right of his own. Particularly must this be so in cases, where the demands of the creditors are limited to the specific property itself, and the general estate of the owner is not chargeable with or liable therefor.

This seems to have been recognized by all the parties at the time of making the syndicate contract. It was the view taken by the Circuit court upon the hearing of this case. The Court held that as against appellees, the claims of the appellant under the bonds acquired from Crawford and secured by the mortgages should be disregarded, and the mortgages annulled so far as they inequitably affected the laborers and supply men; but permitted them to stand as between appellant and the corporation itself.

But it is insisted on the part of appellant, as a last resort, that inasmuch as the company was insolvent, Crawford should have a priority on a *quantum meruit* for the amount expended by him to be enjoyed by appellant. This is assuming that Mr. Crawford when he furnished the money became a general creditor of the corporation of which he was proprietor. But we have already seen this is not true, because as proprietor his claims for money furnished was not that of a general creditor, but at most as sole stockholder.

A sole or dominant stockholder controlling the corporation holds a fiduciary relation to creditor not less imposed with a trust than directors. "A creditor of a corpora-"tion, who is also a stockholder, cannot demand from the "corporation the portion of the capital which he has paid "in and apply it to the extinguishment of the debt."

Lawrence v. *Nelson*, 21 N. Y., 166, 167.

Approved in *Sawyer* v. *Hoag*, 17 Wall., 623.

The views we have sought to express will be found to have received the sanction and support of this and other Courts in many cases, among which we cite the following:

Sawyer v. *Hoag*, 17 Wal., 623.
Clements v. *Moore*, 6 Wal., 299.
Drury v. *Cross*, 7 Wal., 299.
Railroad v. *Howard*, 7 Wal., 392.
Railroad v. *Soutter*, 13 Wal., 522.
Jackson v. *Leuding*, 21 Wal., 622.
Wardell v. *Railroad*, 103 U. S., 657.
Thomas v. *Railroad*, 109 U. S., 524.
John v. *Erie R. R. Co.* 22 Wal., 136.
Lawrence v. *Nelson*, 21 N. Y., 158.
Simpson v. *Bank*, 9 Lea (Tenn.), 713.
Miner v. *Bank*, 1 Pet., 71.
Flint, etc., R. R. v. *Dunly*, 14 Mich., 477.
Kochler v. *Black River R. R.*, 2 Black, 715.
Post v. *Russell*, 36 Ind., 60.
Gillmore, etc., R. R. v. *Kelly*, 77 Ill., 426.
Taylor Priv. Corp., Chap. 10.

XII.

APPELLANT, BY REASON OF HIS OWNERSHIP AND POSSESSION UNDER THE FACTS SHOWN, OF OVER $700,000 OF UNPAID CAPITAL STOCK OF THE CORPORATION, FOR WHICH HE, FOR HIS SYNDICATE, IS LIABLE, HAD NO RIGHT OR EQUITY AS AGAINST APPELLEES TO FORECLOSE THE MORTGAGE, SECURING HIS BONDS UPON THE PROPERTY UNTIL THE CLAIMS OF APPELLEES SHOULD FIRST BE PAID.

1. The facts relating to the unpaid capital stock are very brief and not controverted. By the agreements of June 25, 1884, between appellant and Nickerson and

Drexel, Morgan & Company, on the one hand, and the latter and Henry Crawford, on the other, it is clear that appellant and Nickerson bargained for the delivery by Crawford, to Drexel, Morgan & Company, for their benefit, of $1,200,000 of the capital stock of the corporation.

By the Crawford contract, he agreed to have issued and placed with Drexel, Morgan & Company, all the first mortgage bonds that could lawfully be issued and all the capital stock of the corporation, which might be "lawfully "issued" either in lieu of the stock then held by Drexel, Morgan & Company, or "*for other purposes*" amounting to the par thereof to at least $1,200,000. Appellant and Nickerson, in their agreement, made their obligation to pay Crawford's debt and take the securities, depend upon having issued, and placed with Drexel, Morgan & Company, the additional bonds and additional shares of stock. The latter they required to be issued to such an amount as could lawfully be issued, but the issue must amount "at the par thereof to at least $1,200,000."

The Court will notice a studious avoidance of any mention in these contracts, as to the issue of the additional stock or bonds under Crawford's construction contract. Such an amount of stock was to be issued, however, as might lawfully be done either in exchange for the stock then held by Drexel, Morgan & Company or "*for* "*other purposes*," amounting to at least $1,200,000 in all.

Of course, appellant and Nickerson knew, and were bound to know, what was the amount of the old stock then held by Drexel, Morgan & Company. They knew that that amounted to the sum of $492,450. They knew that it was exchangeable at par for the new stock of the consolidated company; therefore, when appellant and Nickerson bargained with Crawford that he should have the corporation issue, $1,200,000 of stock they knew that the difference between the $492,450 of the old stock and $1,200,000 of the new would amount to $707,550.

It would be idle to claim that appellant or Nickerson were ignorant of the fact that this stock thus to be issued was not to be paid for by Crawford or any one else to this insolvent corporation. That stock, as has been shown, was issued, without any authority, by Henry Crawford as president of the company, to Henry Crawford, on January 26, 1884. By resolution of his board of directors on the 18th of February of that year, directions were given to the proper officers to issue to him the entire amount of $1,200,000 of stock irrespective of the old stock then outstanding and in addition thereto.

On the 5th of May of that year, it was provided by resolution that the old stock outstanding of the two prior companies should be surrendered and new stock issued in lieu thereof for the same amount, and such additional new stock should be issued to the contractor (Crawford) so as to make the aggregate amount to $1,200,000. That $1,200,000 of stock was placed with Drexel, Morgan & Company for appellant and Nickerson by Crawford in August, 1884, in compliance with agreements of June 25th. These shares of stock came to appellant from Drexel, Morgan & Company on the 15th of January, 1885, and were produced by him before the special commissioner on the hearing.

As shown, appellant caused every share of that stock to be voted at the meeting of the stockholders in May, 1885, at which time the stock was held by appellant as his own property and continued so to be down to the latest time to which this record brings its history.

Appellant held, and holds, his title to that $707,550 of unpaid capital stock by the same instrument, the same chain of title, and by virtue of the same right which he held and holds the bonds in controversy in this suit.

2. In the Circuit court appellant was in this position;

The State Court, at the suit of the creditors of this insolvent corporation, had taken possession by a receiver of all its property and assets.

Appellant applied to become a party to that suit thus pending. Upon his application that suit was removed to the Federal court in which appellant had filed his bill in equity to foreclose the mortgage in controversy as the sole holder of the bonds secured thereby. At the time of the filing of that bill, another Court was in possession of the property at the suit of creditors. Appellant, in that situation, with the *res* in the custody of another Court, could not procure a foreclosure of his mortgage, except by leave of such other Court.

That leave was never granted nor requested.

Neither was leave given by the Federal Court after the removal of the creditor's suit thereto for the filing of such bill.

Appellant, however, overcame the difficulty by his application to have the two suits consolidated, which was done.

It is submitted, therefor, that appellant stood before the lower Court, so far as concerns this question, as the sole owner of the bonds of this insolvent corporation, in a suit wherein such Court was engaged in administering its assets amongst its creditors. Appellant himself was a debtor to the corporation, owing it over $700,000, which this Court has often decided to be a trust fund, under the circumstances of this case, for the very purpose of paying these creditors.

> *Sawyer* v. *Hoag*, *ante*.
>
> *County of Morgan* v. *Allan*, 103 U. S. (13 Otto), 498.
>
> *Hatch* v. *Dana*, 101 U. S. (12 Otto), 205,

and cases cited by the Court in those decisions.

Some of these appellees, in the interest and for the benefit of all creditors of the corporation, as early as the 4th of August, 1885, by an amended cross-bill, raised the question of appellant's liability for this stock as an equity in their favor as against appellant's bonds. (Rec., 52–62, and see page 60.)

The petition of the appellee, Cleveland Rolling Mill Company, together with other creditors, on behalf of themselves and other creditors, to review and set aside the first decree of sale, averred as one of the grounds for asking the court to set aside the first decree of foreclosure and sale, the issuance of this stock under Crawford's construction contract. (Rec., 99 *et seq.*)

Proof was taken before the commissioner on the reference to him, on the question of the issue of this stock, and brought before the court on the final hearing, which resulted in the decree of February 16, 1886, and was then discussed and considered by the Court.

In the dissenting opinion of the District Judge, contained in the record (page 141), he considers this question of appellant's stock liability.

Counsel for appellant, however, seem to have overlooked this question in the preparation of their briefs.

What answer they could make to it under the facts and the law, we are not able to conjecture.

There can be no doubt that the Circuit court, in that same suit, would have been authorized, under well settled legal principles, to have decreed an assessment upon the stock to an amount sufficient to pay the debts of the insolvent corporation.

Under other well settled rules, that was not necessary, because the Court had before it as complainant a sole owner of the bonds secured by the mortgage lien, and who at the same time was the sole owner of all issued stock, and solely liable for the amount due upon his unpaid stock.

As all parties in interest were before the Court—the insolvent corporation, the mortgagee claiming a prior lien, and all the creditors of the corporation, and the sole stockholder, and the person who was solely liable for the unpaid stock—the Court, by giving such creditors a paramount lien upon the property of the corporation for the amount of their just indebtedness, could satisfy all demands of justice between the parties in interest, without resorting to any circuity of action, such as would have been the case had the Court required a separate suit to be brought by the receiver to collect the unpaid stock liability sufficient to satisfy the indebtedness due to creditors.

We respectfully submit that justice has been done by the action of the Circuit Court as between all parties in interest.

It would seem to be clear that appellant has no grievance which he can complain of, unless this Court shall hold that Crawford's construction contract was valid, and that appellant was entitled to a decree granting him a first lien upon the property of the corporation as against all creditors.

His bill was framed upon that theory. He alleged that the whole $1,200,000 of bonds of the railway company were "issued and negotiated for value and that "such bonds are still outstanding."

He stood by that allegation through the entire controversy in the Court below. He never amended, nor asked leave to amend, his bill. His mortgage was foreclosed in accordance with that allegation, as against the railway company, because that corporation, controlled by appellant, filed an answer admitting the same to be true, together with all the other allegations of the bill, including admissions of facts not charged in the bill itself.

His counsel in this Court, now fall back upon his equity in the one million dollars of bonds, to the extent of the money advanced by Crawford out of his own funds, and that borrowed from Drexel, Morgan & Co.

They rely for their contention upon the decision of this Court in *Thomas* v. *Brownsville, Ft. Kearney & P. R. R. Co.* (cited *ante*).

Our answer to that is this: Appellant, in this case, has got what this Court decreed in favor of the bondholders in that case, as against the corporation and its stockholders.

The rights of creditors in that case were not involved.

Much is said in one of the briefs for appellant concerning the fact that the Circuit court held the mortgage good as against the railway company.

It is not perceived how the Court could have held otherwise.

The only parties before the Court, contesting on behalf of the railway company, appellant's mortgages, were two stockholders, whom the Court decided had not exercised the good faith which a court of equity required from parties in their position.

With these two stockholders out of the way, the Court had to deal, so far as the corporation was concerned, with the answer, admitting even more than appellant claimed. But that did not affect the rights of these appellees and the other creditors, and, as to them, the case cited is not an authority.

Respectfully submitted.

John S. Cooper,
Addison C. Harris,
William H. Calkins,
Solicitors for Appellees.

Baker, Hord & Hendricks,
P. S. Kennedy,
U. Z. Wiley,
E. W. Tolerton,
Of Counsel.

120-649

FILED
JAN 5 1887
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1886.

No. 1280.

HENRY H. PORTER,
Appellant,
vs.
THE PITTSBURGH BESSEMER STEEL COMPANY (Limited), THE CLEVELAND ROLLING MILL COMPANY, THE SMITH BRIDGE COMPANY, [illegible], ADAMS AND COMPANY, and VOLNEY Q. [illegible],
Appellees.

Appeal from the Circuit Court of the United States for the District of Indiana.

Motions on behalf of Appellees to Dismiss Appeals,

AND

Brief and Argument in support thereof.

A. C. HARRIS,
W. H. CALKINS and
E. W. TOLERTON,
OF COUNSEL.

JNO. S. COOPER,
ATTORNEY FOR APPELLEES.

[illegible] & [illegible], LAW PRINTERS, [illegible] & 45 LASALLE ST., CHICAGO.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1886.

HENRY H. PORTER, *Appellant,* *vs.* **THE PITTSBURGH BESSEMER STEEL COMPANY (Limited), THE CLEVELAND ROLLING MILL COMPANY, THE SMITH BRIDGE COMPANY, CRERAR, ADAMS AND COMPANY, and VOLNEY Q. IRWIN,** *Appellees.*	Appeal from the Circuit Court of the United States for the District of Indiana.

MOTIONS OF APPELLEES,

THE PITTSBURGH BESSEMER STEEL COMPANY (LIMITED), THE CLEVELAND ROLLING MILL COMPANY, THE SMITH BRIDGE COMPANY, CRERAR, ADAMS AND COMPANY AND VOLNEY Q. IRWIN, TO DISMISS THE APPEALS OF APPELLANT.

And the Cleveland Rolling Mill Company, one of the appellees, comes and moves the Court here to dismiss the appeal from the decree and order of payment in its favor. And for cause it, as such appellee, shows:

First. That said decree and order of payment in its favor was made in the execution of and to carry out the final decree entered in said cause on February 16, 1886, as modified by the supplemental order or decree entered therein on March 2, 1886, and that said appellant, by his said appeal, hath not complained of nor does he seek to have this Court review any errors alleged to have been committed by said Circuit court in executing and carrying out said final decree of February 16, 1886, as modified, as aforesaid; nor does the transcript of record in said cause, filed in this Court, present any such alleged errors as are cognizable by this Court.

Second. That said appellant, by reason of having procured the sale of the railroad property and franchises in controversy in said suit, under and by virtue of such decree of February 16, 1886, as so modified as aforesaid, by which the rights and priority of lien of this appellee in the premises were adjudged, as well as the rights and lien of said appellant in the premises, and by reason of the appellant becoming the purchaser at said sale and receiving the deed of the master to, and possession of said railroad, property and franchises, under the decree of said court, entered April 5, 1886, confirming said sale to appellant, and by receiving a portion of the proceeds of said sale, he, the said appellant, is estopped and concluded from further questioning the validity and correctness of said decree of February 16, 1886, so as aforesaid modified. And that all supposed errors by said Circuit court alleged by appellant on this appeal to have been committed by the Circuit court, or contained in the said transcript of record filed in this Court, have reference solely to supposed errors alleged to have been committed by said Circuit court in entering said decree of February 16, 1886, as so modified.

3d. That said appeal is from a decree carrying out and executing said decree of February 16, 1886, as so modified, and said appellant by his appeal only seeks to have said last mentioned decree reviewed after it has been executed.

4th. That said appellant, as appears by the said transcript of record filed in this Court, is in nowise interested in the moneys, ordered and adjudged by said decree and order of payment appealed from to be paid this appellee; and that when said decree of February 16, 1886, as amended as aforesaid was entered, and said sale thereunder was made and confirmed to said appellant, and possession of said railroad, property and franchises delivered to said appellant, and when he had received out of the proceeds of said sale the sum of $157,884.64, he, said appellant, had no further interest in, or claim to, the remainder of said proceeds of sale, out of which remaining proceeds of sale the claim of this appellant was decreed and ordered to be paid.

And so this appellee says, that said appeal does not present any questions of law or fact cognizable, or reviewable by this Court.

CLEVELAND ROLLING MILL COMPANY,
By JNO. S. COOPER,
Its Attorney.

A. C. HARRIS and
WILLIAM H. CALKINS,
Of Counsel.

And also comes Volney Q. Irwin, one of the appellees, in the above entitled cause on said appeal, and moves the Court here, to dismiss the appeal from the decree and order of payment in his favor. And for cause, he, as such appellee, shows the same grounds and points hereinabove set forth by the Cleveland Rolling Mill Company in its motion to dismiss said appeal filed herein.

And so this appellee says, that said appeal does not present any questions of law or fact cognizable or reviewable by this Court.

VOLNEY Q. IRWIN, by
JNO. S. COOPER,
His Attorney.

A. C. HARRIS, and
W. H. CALKINS,
Of Counsel.

And also comes the Smith Bridge Company, one of the appellees, in the above entitled cause on said appeal, and moves the Court here, to dismiss the appeal from the decree and order of payment in its favor. And for cause, it, as such appellee, shows the same grounds and points hereinabove set forth by the Cleveland Rolling Mill Company in its motion to dismiss said appeal filed herein.

And so this appellee says, that said appeal does not present any questions of law or fact cognizable or reviewable by this Court.

Smith Bridge Company, by
Jno S. Cooper,
Its Attorney.

A. C. Harris,
William H. Calkins, and
E. W. Tolerton,
Of Counsel.

And also comes Crerar, Adams & Co., as appellees in the above entitled cause on said appeal, and moves the Court here to dismiss the appeal from the decree and order of payment in their favor. And for cause, they, as such appellees, show the same grounds and points hereinabove set forth by the Cleveland Rolling Mill Company in its motion to dismiss said appeal filed herein.

And so these appellees say that said appeal does not prevent any questions of law or fact cognizable or reviewable by this Court.

Crerar, Adams & Co., by
Jno. S. Cooper,
Their Attorney.

A. C. Harris, and
W. H. Calkins,
Of Counsel.

And also comes the Pittsburg Bessemer Steel Company (limited), one of the appellees, in the above entitled cause on said appeal, and moves the Court here to dismiss the appeal from the decree and order of payment in its favor. And for cause, it, as such appellee, shows the same grounds and points hereinabove set forth by the Cleveland Rolling Mill Company, in its motion to dismiss said appeal filed herein.

And so this appellee says that said appeal does not present any questions of law or fact cognizable or reviewable by this Court.

PITTSBURGH BESSEMER STEEL COMPANY, by
JNO. S. COOPER,
Its Attorney.

A. C. HARRIS, and
W. H. CALKINS,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1886.

HENRY H. PORTER,
Appellant,
vs.
THE PITTSBURGH BESSEMER STEEL COMPANY (Limited), THE CLEVELAND ROLLING MILL COMPANY, THE SMITH BRIDGE COMPANY, CRERAR, ADAMS AND COMPANY, and VOLNEY C. IRWIN,
Appellees.

Appeal from the Circuit Court of the United States for the District of Indiana.

BRIEF AND ARGUMENT

IN SUPPORT OF MOTION OF APPELLEES TO DISMISS APPEALS.

It is stipulated and made part of the decree from which these appeals are taken that they shall be submitted under the 20th rule of this Court.

These motions to dismiss the appeals are not made for the purpose of anticipating, or in any wise affecting, that submission, or the consideration by the Court of the appeals upon their merits—if the Court shall be of opinion that they should be so considered—but for the sole purpose of making our objections to the appellate jurisdiction of the Court and stating our reasons therefor, in the only mode pointed out by rules for making such objections.

We do not therefore ask that these motions shall be taken up by the Court before the hearing of the cases upon the briefs of counsel upon the merits, but that the Court shall consider them in connection therewith.

STATEMENT OF FACTS.

So much only of the admitted facts in the record, as appear to be necessary for the consideration of these motions will here be stated.

The questions which arise upon these motions are, in substance, these:

1st. Where, in a bill to foreclose a mortgage of a railway company, filed by the owner of all the bonds, claiming a paramount lien for his mortgage upon the railway and property in controversy, certain creditors of the company are made parties, as defendants or by intervention, and assert liens for their claims, superior to the lien of the mortgage and bonds secured thereby, by reason of fraud in the execution of the mortgage and issue of the bonds; and that question of priority is, upon the evidence taken, as between them and the complainant, decreed in their favor; and the court finds and decrees that their claims are first and paramount to the lien of the mortgage; and establishes the character which all such claims must bear to have such priority of lien to the mortgage; and refers the claims of such creditors to the master to be found and reported; and by the same decree finds the amount of the mortgage debt, and decrees foreclosure and sale of the property, not only free and clear from the mortgage lien, *but freed from the lien of such creditors;* in such case, is that decree final *as to that question of priority, as between such plaintiff, mortgagee, and such creditors, when all that remains to be done is to ascertain the precise amount due to such creditors respectively?*

2d. Where, under such decree, the complainant, sole bondholder, bids the property in at master's sale, and asks confirmation of sale, and claims title and possession thereunder, freed from all claims of such creditors, and also asks for part of the purchase price to be paid to him, all of which the court decrees; can such complainant and purchaser by appeal from a subsequent decree of the court ordering the payment to such creditors, out of the remaining proceeds of sale, and *in exact conformity to the decree of foreclosure and sale, and in execution thereof*, have that question of priority *on such appeal*, re-examined by this Court?

3d. Where, in such case, the plaintiff, as sole bondholder, is not interested in the proceeds of sale ordered to be paid to such creditors, but where such proceeds, it appears from the record, if recovered by the plaintiff, are the property of a third person, not party to the record, but between whom and such creditors the plaintiff is a mere stakeholder; can such plaintiff, by such appeal, have re-examined in this Court, such matters in which he has no pecuniary concern, and represents, neither in law or equity, such third party, who is the one solely interested as against the appellee-creditors?

The italicizing in this brief is our own.

On October 27, 1884, John Hack and other creditors of the Chicago and Great Southern Railway Company, filed their complaint in the Circuit court of Jasper county, Indiana, alleging that the corporation was insolvent and owed a large amount of debts for construction to creditors who had instituted suits therefor, and that many others were threatening to do likewise, and, when judgment should be obtained, to levy upon and sell the property of the corporation: That the property of the corporation was a trust fund for the common benefit of creditors; and that one of the main elements of value of the property consisted in operating the road as a highway, which would be impossible if the creditors should by making such sales dismember the property:

That Henry Crawford was in possession of the property as contractor, and he and the railway company were made sole defendants:

That plaintiffs sued on behalf of themselves and all other creditors, and prayed that an account might be taken of all claims against the company and the priorities thereof ascertained:

That a receiver might be appointed to protect and preserve the fund so that it could be subject to the order of the court for the common benefit of all creditors. (Rec., 13, 14.)

Henry Crawford, the contractor, named as one of the defendants to the complaint, himself, procured it to be filed. (Rec., 568.)

On the same day with the filing of the complaint, the state court appointed Phillip B. Shumway receiver of the property, assets, books, etc., of the railway company, it, together with the defendant Crawford, having entered appearance and made no objection to the appointment. (Rec., 12.)

On February 26, 1885, the Circuit court of Newton county, Indiana—to which the cause had been transferred by change of venue—removed Shumway as receiver and appointed William Foster in his stead. And in such order of removal and appointment it was provided: " And the court as a condition of the " appointment of the receiver reserves the right to make any " further order respecting the priority and payment of labor " and supply claims, accruing prior to the receivership herein, " as may hereafter seem and appear to the court to be equit-" able and just." (Rec., 198, 199.)

On March 5, 1885, Henry Crawford filed his disclaimer in that suit and was dismissed therefrom as party defendant. (Rec., 198.)

On March 9, 1885, the appellant, Henry H. Porter, filed his bill in equity in the Circuit court for the District of Indiana alleging, in substance: That he was a citizen of Illinois, and that certain other persons and corporations, made defendants, including the railway company, John C. New, trustee, and Volney Q. Irwin, one of the appellees, were citizens of Indiana. That "the said Chicago and Great Southern Railway Company, *on* "*and before the first day of November, 1881, was the owner of* "and engaged in constructing *and operating* a line of railroad "of about *eighty miles in length*, extending from Fair Oaks "Junction, in the county of Jasper, passing through the said "county of Jasper, the counties of Newton, Benton *and Fountain*, all in the said State of Indiana, *to Yeddo*, in said last "named county:"

That it had also located about forty miles more of its line extending from Yeddo to Brazil:

That on said first of November, 1881, the railway company duly executed and delivered to said John C. New, of Indianapolis, Indiana, as trustee, a trust deed or mortgage of that date, conveying to New, as trustee, the line of above mentioned road and all other property, franchises, tolls and revenues of the company, to secure an issue of $2,000,000 of its bonds to be executed by it, bearing interest at the rate of six per cent. per annum, payable semi-annually on the first of January and July of each year. And that the mortgage, immediately after its execution, was duly recorded in said five counties, and then became and ever since has continued a first lien on the property.

The bill further recites: that in March, 1883, the railway company acquired by consolidation all the property of the Chicago and Block Coal Railroad Company, consisting of about twenty miles of completed railroad, extending southwardly from Attica to Yeddo, in Fountain county, Indiana, and certain rights of way and partially constructed railroad from Yeddo to Brazil. [This railway from Attica to Yeddo is part of the same railway which the bill alleges The Chicago and Great Southern owned and was operating *on November 1, 1881.*]

The bill further recites: that after the consolidation, and on April 9, 1883, the Chicago and Great Southern Company, by way of further assurance, executed a supplemental trust deed, conveying all the property theretofore belonging to the Chicago and Block Coal Railroad Company as further security for the payment of the principal and interest of the bonds, which last named mortgage was duly recorded in the counties of Fountain, Parke and Clay, Indiana, and became and ever since has continued, a first lien on that property:

That after the execution and delivery of the mortgage of November 1, 1881, the company issued and negotiated for value $1,200,000 of the bonds specified therein, which were still outstanding: That on July 1, 1882, the interest matured on the bonds and was not paid, and the interest maturing on the bonds on the 1st of January and July of 1883 and 1884, and the 1st day of January, 1885, was all past due and unpaid: That complainant was the owner and holder of all the bonds and coupons belonging thereto, issued as aforesaid, and that on the —— day of January, 1885, he demanded in writing of New, as trustee, that he (New) should proceed to execute the trust of said two mortgages, and to protect the lien and priority upon the railroad property, and procure the sale of the same to satisfy the principal and interest of the bonds, and that, in obedience to the demand, the trustee instituted proceedings in the Newton Circuit court, Indiana, to foreclose the mortgage and sell the property; but on the —— day of ———— New, as such trustee, dismissed his bill and declined further to prosecute the same, and still declined, although he had been thereunto specially requested by plaintiff, and declined to take any other steps to enforce the trust: That the mortgaged property constituted an inadequate security for the bonded debt, and that no interest had ever been paid on any part of the outstanding bonds; that the income was insufficient to pay the operating expenses; that the railway company was insolvent, and had no property or assets other than the mortgaged property, and that its railroad and all appurtenances must necessarily be considered as a unit, and was altogether incapable of severance, without doing great injury and injustice to all persons interested: Recites that the mortgage provided that if a six months' default should occur in the payment of the principal or interest on any of the bonds, after actual demand, that then it should be lawful for the trustee, upon the written request of the holders of a majority in amount of the bonds outstanding, by receiving a satisfactory indemnity, to, either with or without entry, sell the property to the highest and best bidder, after having advertised the sale, as therein provided; but that nothing in the instrument should in any way be construed to prevent legal proceedings to foreclose the mortgage, and procure a judicial sale of the property thereby conveyed, after a six months' default in payment of interest or principal should have occurred: That by reason of the default in the payment of interest, and the refusal of the trustee to proceed to the foreclosure and sale of the premises by judicial proceeding, there had vested in plaintiff, as the holder and owner of the bonds, the same right and privileges, for the enforcement of the trust thereby conferred, that might have been exercised by the trustee: Prays that the railway company, New, as trustee, Volney Q. Irwin, and others be made parties defendant, and that the said defendant creditors of the said railway company should be each severally required to set forth and specify the nature and character of their several and respective claims against said company, and that John C. New, as trustee, should be required specifically to answer the allegations of the bill as to his action in connection with the trust, and that a final decree be entered in favor of the plaintiff, forever foreclosing the equity of redemption of the railway company, and all persons claiming by or through it of the premises, property, rights, franchises, etc., set forth and described in the two mortgages, and that a receiver be appointed to take possession of the railroad property, rights, franchises, etc., and to hold, operate, use and administer the same, under the orders and decrees of the court, for the benefit of plaintiff and other persons in interest, and for further and proper relief. (Rec., 1–11.)

On or about the 13th of March, 1885, the appellant filed his petition for the removal of the suit commenced in the State court by John C. Hack and others (which will be hereinafter called the Hack suit) to the United States Circuit court for the District of Indiana.

On the 18th of April, 1885, the Circuit court, on the motion of appellant, entered an order reciting that the Hack suit had been transferred from that court, and that as both causes involved the same property, they should be consolidated under the style of "*Henry H. Porter* v. *The Chicago and Great* "*Southern Railway Company et al. Consolidated Cause*," and that the pleadings and orders theretofore filed and entered in either of the causes should stand as pleadings and orders in the consolidated cause. (Rec., 30, 31.)

On the same day—the 18th of April—the court removed William Foster, who had been appointed receiver by the State court in the place of Shumway, and appointed, in the stead of Foster, George C. Kimball as receiver. (Rec., 30, 31.)

On the 9th of April, appellee, Volney Q. Irwin, filed his cross-bill against the plaintiff and the railway company, alleging in substance, that on the 9th of November, 1881, he entered into a contract with the railway company to do certain work in the construction of its railroad, and that for work done under such contract the company became indebted to him in about the sum of $12,000, which was due and unpaid, and that he subsequently got a judgment against the company for upwards of $11,000 in the State court, and for the foreclosure of a lien upon the railroad. He alleged that the bonds of appellant were issued without any consideration whatever, and that the present holders had knowledge and notice that the bonds were then and there without consideration. He prayed that the court would order, adjudge and decree that his claim was a lien on so much of the road as was constructed between certain points (mentioned in his construction contract) prior and superior to the mortgage, and that, if there should be a decree of foreclosure of the mortgage, the proceeds of the sale under such decree should be applied, first, to the payment of the sum due to complainant, before anything should be paid on the bonds, and for general relief. (Rec., 17-19.)

On May 6, 1885, the Cleveland Rolling Mill Company, one of the appellees, and other creditors, by stipulation between them and the plaintiff, were made parties defendant. (Rec., 38-39.)

On June 24, 1885, the Cleveland Rolling Mill Company, appellee, together with certain other creditors, filed its joint and several answer to the bill of complaint of appellant, alleging in substance, that the rolling mill company, during the years 1881 and 1882, furnished for building of said railroad, iron rails, for which the railway company was, on the 11th of March, 1885, indebted to the defendant in the sum of $37,724.36, for which amount it recovered a judgment against the railway company in the Circuit court of Newton county, Indiana, of which suit the said court had jurisdiction, as well as of the railway company, and that said judgment was a lien on the railway of the railway company. Charges that it and the other defendants in the answer is and are entitled to be paid out of the proceeds of the sale of the railway property, and out of the income, the amount due to it and them respectively, for such material furnished, with legal interest thereon. Alleges that the bonds, secured by the mortgages sought to be foreclosed, were issued to Henry Crawford under a construction contract pretended to be made by him with the railway company at a time when he was in full control of the railway company: That the construction contract between the railway company and Crawford was fraudulent and void; "that the same was in effect a contract or "pretended contract, made by the said Crawford to and with "himself, he having, at the time the contract was made, the "full control and direction of said railway company and the "board of directors:" That the bonds delivered to Crawford under his construction contract were, by him, hypothecated with the firm of Drexel, Morgan & Co., bankers, in the city of New York, and that they were purchased by Porter from Drexel, Morgan & Co.; that before the latter received the bonds on hypothecation or pledge they investigated the railroad and contract between Crawford and the company, and knew all about its fraudulent character—that is, they knew that Crawford had entire control and direction of the board of directors of the railroad company at the time the contract was entered into, and at the time that the bonds were delivered to him: That Drexel, Morgan & Co. not only took the bonds in hypothecation, but received the assignment of the construction contract as collateral security along with the bonds for money borrowed of them by Crawford, with full knowledge of the fraudulent character of the contract and of the delivery of the bonds: That before appellant (Porter) acquired the bonds and interest coupons, which he sought to foreclose, he had inquired into and knew the facts and circumstances relating to the construction contract, and that Crawford had full and entire control of the railroad company; that he owned a majority of its stock; that the directors and officers were his clerks and employes subject to do his bidding, and that at the time the bonds were delivered to Crawford, he had like control over the officers and directors of the railroad company, and was a holder and owner of a majority of its stock: Charges that under the facts and circumstances Crawford's construction contract and the delivery of the bonds to him in accordance therewith, were fraudulent and void, as against the defendants, judgment creditors of the railroad company; "and that the said mortgage "and bonds secured thereby, together with interest coupons "representing the interest due on said bonds, should, as "against the defendants, be considered and treated by this "court as a court of equity subordinate to the lawful liens and "claims of these defendants in the premises:" Charges that before appellant consummated the purchase of the bonds and interest coupons, he knew of the claims of defendants in the premises, together with the claims of others in addition to those of the defendants, and that as between him, appellant, and Crawford, it was provided in a contract in writing, that the sum of $100,000 or more should be retained by appellant and set apart with which to pay all liens against the railroad property which should be established, paramount to the lien of the mortgage, and that appellant, when he purchased the bonds and interest coupons, and made the agreement for the purchase thereof, knew the rightful claims of defendants in the premises, and sought to protect his mortgage security by making provision for the payment of defendants' claims and other claims that might be established against the property prior to the mortgage: That appellant retained and had then the sum of $100,000, or more, in his hands as a trust fund for the purpose of paying defendants in case they should establish a lien ahead of his mortgage, and that the same was a part of the consideration which he agreed to pay for the bonds bought by him from Drexel, Morgan & Co., in accordance with the agreement between him and the First National Bank of Chicago, Crawford and said Drexel, Morgan & Co., and charges that by virtue of such agreement, that of the said sum of $100,000 or more, which the said Crawford should not be required to pay for claims established as prior liens to the mortgage; that appellant was obligated and bound to pay any such surplus to said Crawford: Charges that the effort being made by appellant to foreclose said mortgages, freed from the claims of defendants, was in the sole and exclusive interest of Henry Crawford. The answer sets forth as an exhibit the construction contract between Henry Crawford and the railway company. (Rec., 42–52.)

On the 4th of August, 1885, appellees, Volney Q. Irwin and the Smith Bridge Company and other creditors filed an amended cross-bill in behalf of themselves and other creditors, in which is recited the history of the railway company and the execution and delivery of the bonds to Crawford under his construction contract: That, in addition to the bonds delivered to Crawford under the construction contract, the company, by his procurement and in pursuance of the same contract, delivered to him also a large amount of the capital stock, believed to be about $1,200,000, without any consideration: That appellant, and those associated with him, knew before and at the time of the entering into the arrangement for the purchase of the bonds and stock, and before advancing any money, the facts attending the issue of the stocks and bonds to Crawford: That the railway company was under the control of appellant and had filed its answer, admitting the allegations of appellant's bill for foreclosure: Deny that appellant was the trustee of those associated with him as owners of the stock and bonds in any sense, which authorized him to sue in his own name for the foreclosure: Pray that the mortgages sought to be foreclosed should be canceled as fraudulent and void, and that the bonds held by appellant, or by him and his associates, be brought into court and canceled as void; "that the stock issued to "said Crawford hereinbefore mentioned be declared "null aad void, and that the said plaintiff be required "to produce the same in this court, that the same may "be canceled; or if the court shall deem it more in consonance "with equity and good conscience that he or they may be permitted to hold and retain the stock of the par value of the sum "actually due said Crawford and said Porter upon a final accounting herein, and the remainder of said stock be hereafter "canceled, or that the court will order an assessment to be made "and collected upon said stock for a sum sufficient to liquidate "all the indebtedness of the said railway company, and find and "ascertain what amount is thereafter due from the holders of "said stock upon so much thereof as shall not be returned and "canceled": Prays, *inter alia*, "that the court will ascertain "on final hearing the amount due for labor and supplies furnished to and used in and upon the road, and will declare the "same to be a prior and first lien upon the property superior "in equity to the claims or liens of any or all other persons for "the benefit of all persons or such class or classes as may become parties before final decree." (Rec., 52-62.)

This amended cross-bill, by the printed copy in the record, purports to have been filed on behalf of appellees, the Smith Bridge Company, and Volney Q. Irwin and other creditors. In the heading, appellees Irwin and the Cleveland Rolling Mill Company are named, and it is signed on behalf of the rolling mill company, the bridge company, with others.

On the same day, the 4th of August, 1885 (wrongly copied as 1886) the Smith Bridge Company filed its answer, setting up substantially the same defense to the mortgages and the bonds secured thereby. (Rec., 62-69.)

This answer was afterwards, on the 30th of September, 1885, withdrawn by leave of court so far as it affected the Smith Bridge Company; but the pleading was required to remain on file as an exhibit to other answers filed by Messrs. Harris & Calkins and others as solicitors.

On the same day, the 4th of August, 1885, the appellee, Volney Q. Irwin, filed his answer, claiming priority of lien as against the mortgages and bonds, for the amount due to him by the railway company, and referred to the answer of the Smith Bridge Company above mentioned, which he adopted and made part of his answer. (Rec., 69-71.)

On the 11th of August, 1885, the appellee, the Pittsburgh Bessemer Company (limited), filed its intervening petition, claiming a lien upon the income, earnings and proceeds of sale of the railway, in preference to the bonds of appellant, by reason of certain rails, belonging to it, having been taken fraudulently, and placed in the track of the railway company: That there was due to the claimant on March 1, 1885, the sum of $16,291.65, with interest on the principal sum of $13,013.17, from and after the 1st of March. 1885. (Rec., 71-75.)

On the 2d of October, 1885, the appellees, Crerar, Adams & Co. filed their intervening petition, claiming a balance due to them by the railway company of $7,809.94 for merchandize, sold and delivered by them to the company from January 12, 1883, to October 25, 1884, which claim was ordered by the court to be referred to the master to take evidence and report the same, with his finding thereon. (Rec., 91-96.)

It will thus be seen, that on and prior to the 2d of October, 1885, each of the five appellees were parties to the cause, either as parties-defendant, or as intervenors, and that each of them had asserted their respective claims for materials and labor in the construction, betterment or operation of the railway, for the amounts alleged to be due to them respectively, and that all, except Crerar, Adams & Company, had asserted for their claims, priority of lien to the lien of the mortgages and bonds.

On the 17th of August, 1885, the court, presided over by the District Judge, before any testimony had been taken, entered a decree, finding the amount due under the mortgage of $1,474,680. including the principal of the bonds, $1,200,000, and the amount of interest-coupons in default, amounting to $274,680, decreeing that the railway company should pay both amounts—principal and interest of the bonds—within five days, and that in default thereof, the equity of redemption of the defendants, and all persons claiming by, through or under them, or either of them, in, to and over the property mortgaged, should be foreclosed and the property sold. One of the solicitors for certain of the creditors and intervening stockholders entered his protest, on behalf of his clients, to the sale and decree thus to be made. (Rec., 77-81.) By the terms of the mortgage and bonds the principal of the latter could not be declared due until their maturity. (Rec., 5-11.)

Certain stockholders, Swan and Atkinson, intervened in the cause and were made parties defendant, but as the relief prayed for by them was ultimately denied by the court, so much of the record, as concerns them, is not material here.

On the 8th day of October, 1885, the appellee, the Cleveland Rolling Mill Company and certain other creditors of the railway company, which had been made parties defendant and had filed their answers, together with the two stockholders, filed their petition for the purpose of having the decree of foreclosure and sale, entered by the court on the 17th day of

August, 1885, reviewed, and set aside and the petitioners allowed to defend against the foreclosure of the mortgages. They filed their petition of rehearing on behalf of themselves and other stockholders and creditors of the railway company similarly situated, alleging the fraudulent manner in which the bonds had been issued, and praying that the decree of foreclosure of the 17th of August, 1885, should be re-heard and set aside, and that the petitioners might have further and other relief. (Rec., 95–119.)

On the 12th of October, 1885, the court, presided over by the Circuit and District judges, ordered that the decree of foreclosure of August 17th, 1885, be set aside, to which ruling appellant excepted, and such order contained this further provision: "And it is further ordered that as to so much of said "case as involves the validity of the mortgage and the mort-"gage debts as the same are described in the bill of said Por-"ter and the defendants' answers, the defendants complete the "taking of their testimony on or before November 20th, 1885; "and that the complainant, Porter, complete the taking of his "testimony in rebuttal within ten days thereafter." (Rec., 120.) That testimony, on behalf of the defendants and the complainant (appellant here) was taken before John Gray, special master, between the 31st day of October, 1885, and the 27th day of November of that year, and the oral testimony of the witnesses, as shown in their depositions, is contained in the record, at pages 260 to 741, and the exhibits and documentary evidence, introduced on that reference, are contained in the record, at pages 823 to 939. Evidence was taken on that reference of the character and amount of the claims of appellees, the Cleveland Rolling Mill Company and Irwin. (Rec., 351–355, 560–562, 862–864, 536–538.)

The testimony taken on that reference, with the exhibits and documentary evidence, having been reported and filed in court, and the cause having been argued by counsel, on the 16th of February, 1886, before the Circuit and District judges, a decree was entered, the District Judge dissenting in part from the decree. That decree denied the relief prayed for by Swan and Atkinson, the intervening stockholders, and dismissed their petition, reserving the question of costs as against them; and it in substance decreed, that the mortgages or deeds of trust and the bonds secured thereby were binding obligations as against the railway company, and were a superior and paramount lien upon all the railway property and franchises mentioned in the mortgages and thereby conveyed, except as to all unpaid valid claims against the railway company for labor, material, rolling stock, lands and right of way, whether reduced to judgment or remaining in open account—and accrued prior to the appointment of the receiver—for the construction, betterment or operation of the railroad; also except as to the receiver's certificates and indebtedness; and certain court indebtedness, which were decreed to be superior and paramount to the lien of the mortgages.

The order of priority of liens upon the property was established by the decree as follows:

1st. Receiver's certificates to the amount of $23,000, issued under the order of the court of April 29, 1885.

2d. All unpaid valid claims against the railway company, accrued for right of way, land, labor, rolling stock and material used in the construction and betterment of the railway, or used in the operation of the railway prior to the appointment of the receiver, whether reduced to judgment or remaining in open account.

3d. All other receiver's certificates and receiver's and court-indebtedness, accrued against the property, since the appointment of the receiver.

4th. The amount due for matured and unpaid interest coupons, representing interest on the bonds, and amounting to $291,860.

The latter amount was found and adjudged against the company, which it was ordered to pay to the complainant, and that the mortgages and deeds of trust should be foreclosed and the equity of redemption to the mortgaged property of the defendants should be forever barred and foreclosed, and that all of said property, franchises, etc., should be sold free from appraisement or valuation as an entirety, at public auction, by the master in chancery of the court, after having given notice of the time, place and terms of sale by advertisements, published as in said decree required: That upon confirmation of the sale, the balance of the purchase money bid should be paid by the purchaser into the registry of the court, unless it should be otherwise then ordered, adjudged and decreed; and that upon the full performance by the purchaser of the orders and decrees of the court thereafter to be entered, the purchaser should be let into the possession of the property, and should receive a good and sufficient deed therefor, in which the railroad company and John C. New, as trustee, should unite with the master. It was further decreed, that a reference should be made to the master to take the testimony and report his findings, amongst other things, upon "the amount due the several claim- "ants under the sixth paragraph of this decree, showing the "amount due each claimant, and the aggregate amount due "upon each of the two classes of the claims mentioned in said "sixth paragraph." [The sixth paragraph of the decree adjudged the priority of the claims of creditors.]

The appellant excepted to those portions of the decree, which adjudged the lien of the creditors, as contained in the sixth paragraph of the decree, to be prior to the lien of the mortgages, and to those parts of the decree upon which such adjudication was based, and prayed an appeal to this Court, which was allowed upon giving bond to the satisfaction of the court. Swan and Atkinson, the intervening stockholders, excepted to that part of the decree denying them the relief prayed for in their answer, and which dismissed their petition, which appeal was also allowed upon their giving bond to the satisfaction of the court. (Rec., 129-134.)

Neither of those appeals was ever perfected.

On the 2d of March, 1886, and during the same term of the court, on motion of appellant, a supplemental decree was rendered, requiring all persons, claiming to be creditors of the railway company, and to have claims which were entitled in equity to be paid out of the proceeds realized from the sale of the property, to present, and file with the master, their claims prior to the day of sale; and that all claims which should not be filed before that date should be and the same were barred and foreclosed. The last clause of the supplemental decree was as follows: "And it is further or-" dered, adjudged and decreed, that the sale of the property " hereinbefore ordered shall pass to the purchaser title thereto, " free and discharged of all liens and claims, including the two " classes of claims mentioned in the sixth paragraph of said " decree." A copy of this supplemental decree was omitted from the transcript of record and has been supplied by appellant, and a copy thereof printed in his brief, at pages 31 and 32.

On the 27th day of March, 1886, the master reported that he had, on that day, sold the property to the appellant for the sum of $501,000, such appellant being the highest bidder, and that appellant had paid to the master the sum of $50,000, as required by the decree, which was deposited by the master in the registry of the court. (Rec., 147, 148.)

On the 5th of April, 1886, the complainant (appellant here) applied, by petition to the court, to have the sale to himself confirmed, reciting that, under the order of the court, of April 29, 1885, receiver's certificates were issued to the amount of $23,000; that under another order, entered August 15, 1885, receiver's certificates to the aggregate amount of $50,000 were issued, and that under another order, on the last named date, receiver's certificates to the aggregate amount of $80,000 more were issued, and that all three of the series of receiver's certificates were still outstanding and unpaid: That the appellant purchased from the receiver, and was then the owner and holder of all the receiver's certificates, amounting on their face to $153,000, and, with interest to that date, to $157,884.64. "That after subtracting from the purchase price, to wit: "$501,000, to be paid for said railway and property upon "such purchase, the entire amount due upon said three series "of receiver's certificates, there will remain of said purchase "money the sum of $343,115.36, *the same being more than "sufficient to pay in full all claims filed against said railway and "property, or the proceeds to arise from the sale thereof, together with all costs of court, solicitor's fees and unpaid receiver's expenses*": He therefore moved the court for an order, approving and confirming the sale, upon payment of the balance of purchase money, and that he might pay in, as so much cash, upon the purchase, the said three series of receiver's certificates, amounting, together with interest, to said sum of $157,884.64, and that the receiver should be ordered and directed to deliver full posssession of the railway and property to complainant, upon complainant's receiving the deed to said railway and property from said master.

The court thereupon decreed that the sale be approved and confirmed; that upon the payment by the purchaser of the full sum and amount to be paid by him, the master was ordered and directed to execute and deliver to the complainant and purchaser a good and sufficient deed of conveyance, conveying to him the railway and property, franchises, etc., "*freed* "*and discharged of all liens and claims, including the two* "*classes of claims mentioned in the sixth paragraph of the said* "*decree of foreclosure and sale* rendered and entered in this "cause February 16, 1886, and upon delivery of such deed to "said purchaser, Porter, the receiver shall and he is hereby "ordered to deliver full possession of said railway and prop- "erty to said Henry H. Porter": That the complainant, Porter, as such purchaser, should be allowed to turn in, and pay as cash, as part payment of the purchase money, the three series of the receiver's certificates, as follows: 1st. The receiver's certificates issued under the order of court of April 29, 1885, amounting to $23,000 principal, and with interest to the sum of $24,135.17. 2d. Receiver's certificates issued under the order of the court of August 15, 1885, to the amount, in principal, of $50,000, and with accrued interest to $51,804.93. 3d. Receiver's certificates issued under the order of the court of August 15, 1885, to the par value of $80,000, amounting with accrued interest to $81,944.64, making a total of $157,884.64 of receiver's certificates, authorized to be paid as part of the purchase money.

The decree further provided, that the reference to the master, ordered by the decree of February 16th, should be continued. (Rec., 149-153.)

On the 31st of August, 1886, the master, in obedience to the decree of February 16th, as amended by the supplemental decree of March 2, 1886, reported in favor of a large number of claimants, amongst which are the claims of all the appellees, except Irwin; and for the exact amounts respectively as ultimately decreed in their favor, except that the court decreed interest to be allowed upon each of the claims from the date of the appointment of the receiver, to wit: from the 27th day of October, 1884. (Rec., 170-181.)

On the 28th of September, 1886, the appellant filed his separate exceptions to the report of the master on each of the claims of the four appellees, the Pittsburg Bessemer Steel Company, the Cleveland Rolling Mill Company, the Smith Bridge Company, and Crerar, Adams & Co. (Rec., 181–185.)

On the 8th of October the master filed his separate report upon the claim of the appellee, Volney Q. Irwin, allowing him the amount finally decreed by the court, except the interest since October 27, 1884. (Rec., 185–187.)

On the same day, to wit: the 8th of October, 1886, the appellant filed his exception to the report of the master on the said claim of the appellee, Irwin. (Rec., 191, 192.)

In none of these exceptions is any claim made, that the amount or character of the claim, as allowed by the master, was not such as was provided by the 6th paragraph of the decree of foreclosure and sale of February 16, 1886, but each and every exception is grounded upon the question of priority of lien.

In the case of Pittsburg Bessemer Steel Company, (Rec., 181, 182) the exceptions are in substance as follows: 1st. That the claim was for materials for the construction of the railroad north of Attica, after the execution and recording of the mortgage to New as trustee, and with full notice thereof, and after bonds had been negotiated for value, and that the company did not attempt to obtain a lien under the laws of Indiana; and therefore as such subsequent creditor, it was not entitled to payment out of the fund in court in preference to complainant as bondholder. 2d. That the debt due the steel company was not a debt of the Chicago and Block Coal Railroad Company or any lien upon its property, and therefore had no equity to be paid out of the proceeds of the sale of that part of the railway south of Attica. 3d. That the steel company received for its debt the personal obligation and security of a third person, which it still held, and therefore was not entitled in equity to any lien on the railway property and not entitled to any payment out of the proceeds of sale in preference to the complainant as bondholder. 4th. That the entire net proceeds of the sale of the railway did not amount to a sum equal to the principal and interest of the debt for which the bonds, issued under the mortgage to New as trustee, were pledged in January, 1883, to Drexel, Morgan & Co., for value; and that complainant as surety upon the debt to Drexel, Morgan & Co., having paid the same, was in equity subrogated to all the rights, liens and franchises of Drexel, Morgan & Co., to the extent of the debt, which said surety paid, and interest and expenses, for which reason the master should have reported and found that the complainant was entitled to the entire net proceeds of the sale in court in preference to the claim of the steel company.

The exceptions filed to the master's report, as to the other four claims, were substantially similar, except that as to the claim of Irwin, the additional objection is made, that appellee Irwin, had merged his original cause of action against the railway company, in a decree foreclosing a statutory lien on that part of the railroad in Warren county, which he had procured to be sold and from which redemption was made.

The assignment of errors on page 47 of appellant's brief, furnished to us, is, in substance, as follows: 1st. That the court erred in decreeing the claims of appellees to be liens upon the property of the original Chicago and Great Southern Railway Company prior to the lien of the mortgage or deed of trust executed and delivered by the railway company to John C. New, trustee, and bearing date November 1, 1881. 2d. That the court erred in overruling the several exceptions of appellant to the reports of the master upon the several claims of the five appellees. 3d. That the court erred in decreeing the several claims of the five appellees to be liens upon the railway and property of the Consolidated Chicago and Great Southern Railway Company, prior to the mortgage or deed of further assurance executed and delivered by the Consolidated Company to New as trustee, under date of April 9, 1883, conveying to New, as trustee, the railway and property formerly known as The Chicago and Block Coal Railroad.

Appellant obtained title to the bonds, secured by the mortgages sought to be foreclosed, by a written contract of purchase from Henry Crawford, dated the 26th of December, 1884, and called the "Syndicate agreement." It is contained in the printed record at pages 911 to 915. Crawford had pledged $1,000,000 of these bonds, and all the issued stock of the railway company, as his own property, with Drexel, Morgan & Co., bankers of New York, in January, 1883, to secure the payment of his promissory notes, which had become due prior to June 25, 1884.

On that day, by written contract between that firm and their debtor, the latter agreed that in consideration that the firm should accept the offer of appellant and one Samuel M. Nickerson, president of the First National Bank of Chicago, he, as such debtor and pledgor, would procure to be issued and placed with the firm, under the terms of the original pledge, all additional first mortgage bonds of the railway company, which could lawfully be issued, and certain capital stock of the corporation: That the firm might accept the offer of appellant and Mr. Nickerson. The firm agreed on its part to accept the proposition of the latter. (Rec., 906, 907.)

The offer of appellant and Nickerson was contained in a written contract, of the same date, between them and that firm, and was in substance, that if Crawford's indebtedness, then amounting to the principal sum of $350,000 and about $30,000 for interest and other expenses, was not paid in sixty days from June 20, 1884, the firm would sell to appellant and Nickerson all the bonds and capital stock in pledge with the firm (including the additional bonds and stock Crawford had agreed that day to place under the terms of his original hypothecation), for an amount equal to Crawford's indebtedness, but the firm not assuming any liability in respect to such delivery of the additional securities by Crawford to them. Appellant and Nickerson agreed to buy from the firm the securities named upon the above terms and conditions, provided the additional shares of stock and bonds should be issued and transferred, as agreed by Crawford, and pay for the same by January 15, 1885. (Rec., 907-908.)

The indebtedness was not paid within the sixty days; and the additional bonds and stock were issued and placed with the firm within that time. (Rec., 910.)

Appellant and Nickerson, then, by payment to that firm of the amount of Crawford's indebtedness, would, as between the parties, succeed to the interest of the firm in the securities.

Before any payment had been made, however, and nearly two months after the railroad property had been placed in the custody of the State court, through its receiver, by Crawford's procurement, the syndicate agreement was negotiated and made.

Without here raising any contention as to whether that agreement amounted to an entirely new contract between the parties, and deprived appellant of any equity to be subrogated to the rights of Drexel, Morgan & Co., it is admitted that, as between appellant, representing his syndicate of purchasers of the securities, and Crawford, and his assignee, the First National Bank of Chicago, that syndicate agreement contains the terms of purchase and sale, which are and have been in force between them, since the 26th day of December, 1884.

It is with reference solely to the question as to what interest appellant has in the proceeds of sale of the railway property—out of which appellees' claims were ordered to be paid—that this syndicate agreement is here presented for consideration.

Because, if the appellant has not been harmed by the decree which he appeals from, then, it will be submitted, that his appeal should be dismissed. It will be further contended by appellees, that appellant, after the foreclosure of the mortgages and sale of the property, and its purchase and possession by him, and his receipt of that portion of the proceeds of sale as shown, had no further interest in the remaining proceeds—out of which appellees' claims were ordered to be paid—and was therefore not injured by the decree appealed from.

The substance of the syndicate agreement so far as concerns the subject under consideration was as follows:

That Henry Crawford, being the owner of the $1,200,000 of bonds, and a like amount of the capital stock of the railway company, and all the stock of the Union Coal Company, sold to "The Syndicate," composed of appellant and his associates, such securities, for the price of $500,000 in cash, and if, on a foreclosure of the mortgage securing the bonds, and a sale of the railway property, it should be bought by or for the benefit of the syndicate, and a new company should be organized to own and operate the property, then that Crawford should receive out of the proceeds of sale of the securities of such new company, one-third of such proceeds until he should have received an additional $250,000, with interest at six per cent. from January 15, 1885, and no more. Or, if such securities, representing the property so conveyed to such new corporation, should be distributed, in kind, amongst the members of the syndicate, then one-third of such securities should be delivered to Henry Crawford, or in lieu thereof, at the option of the syndicate, they might pay to him the sum of $250,000 with interest as above.

Out of such purchase price for the securities, the syndicate were to first pay the indebtedness of Henry Crawford to Drexel, Morgan & Co.

And, out of the remainder, they were "to pay and clear "off any and all claims against said Chicago and Great "Southern Railway Company, which may be decided by "the court to be liens upon the said line of railway paramount to the lien of the bonds and coupons secured by the "trust deed to John C. New, dated November 1, 1881, or "which the court may decide shall be equitably payable out of "the proceeds of the sale of said line of railway, including," etc.

The syndicate, out of such remaining purchase money, were also to pay all receiver's indebtedness incurred prior to January 15, 1885. The remainder of the purchase price was to be paid to Henry Crawford or his assigns.

The agreement, in substance, amounted to the sale of the securities representing the railway property, for $500,000 in cash, and a reserved interest of one-third to the seller, with the option, on the part of the purchaser, to satisfy that reserved interest of one-third, by paying to the seller an additional sum of $250,000; and that, after paying the indebtedness of the seller to Drexel, Morgan & Company, the remaining purchase money was to be held by the purchaser to pay all claims prior in point of legal or equitable lien to the mortgage; so that the purchaser should get on a foreclosure and sale of the mortgaged property, a good title thereto, free from all liens, and *at a total cost not to exceed the purchase price of the securities.* After these things were accomplished, any residue of the purchase money of the securities was to be paid to the seller.

On the same day of the execution of the syndicate agreement, Henry Crawford assigned all his interest therein to the First National Bank of Chicago, as security for his indebtedness to that bank. (Rec., 915-917.)

On January 14, 1885, the appellant had paid Henry Crawford's indebtedness to Drexel, Morgan & Company, amounting, in principal and interest, to $392,363.24. (Rec., 921-923.)

That left in appellant's hands, out of the $500,000 of purchase money, $107,636.76, and out of the whole sum of $750,000 (which the syndicate must pay for *all* of Crawford's interest in the securities), the sum of $357,636.76. In other words, appellant, for the syndicate, held $107,636.76, which must either be paid to Crawford or the creditors, and a one-third interest in the securities, for the benefit of Crawford or the creditors.

When the foreclosure and sale of the railway property had been perfected, and appellant, for his syndicate, had obtained a good title and possession, freed from all liens, his account with Henry Crawford stood thus:

Paid to Drexel, Morgan & Company	$392,364 24
" Master as purchase price of property, in receiver's certificates ($157,884.64), and cash ($343,115.36)	501,000 00
Total	$893,364 24
Deduct amount of receiver's certificates not chargeable to this account	150,828 96
Net amount paid out	$742,535 28

By the syndicate agreement only the amount of the receiver's indebtedness incurred up to January 15, 1885, was to be charged to, and taken out of, the purchase price of the securities. Shumway, the first receiver, was removed in February, 1885. By the report made by Kimball, as receiver, upon which the first series of certificates for $23,000 were ordered to be issued to pay receiver's indebtedness, it appears that up to the month of March the receiver's indebtedness only amounted to $7,055.68, (Rec., 32), which deducted from the total amount of receiver's certificates paid by appellant as so much cash on his purchase, ($157,884.64), leaves the above amount of $150,828.96, which represented money paid out in construction, betterment and for receiver's indebtedness incurred after January 15, 1885, and not chargeable against the purchase price of the securities, under the syndicate agreement.

The aggregate amount of the claims of appellees, ordered to be paid is the sum of $92,420.30. (Rec., 194.) That is less than the sum left in appellant's hands out of the cash part ($500,000) of the purchase price, after Drexel, Morgan and Company were paid.

The amount left, of the proceeds of sale, at the date of the decrees appealed from was $325,194.27, (Rec., 193), and of that sum, after the payment of these appellees' claims, there would still remain in the registry of the court $232,773.97, no part of which is in controversy here, and which, if withdrawn by appellant, would further reduce the amount paid out by him under the syndicate agreement, from the above sum of $742,535.28 to $509,761.39, a little more than he was to pay in cash, for what amounted to an interest of two-thirds in the securities, whilst at the same time he has a perfect title to, and possession of, the whole of the property represented by such securities.

It is not shown in the record, whether appellant and his syndicate have exercised the option of paying to Crawford or his assignee, the bank, the sum of $250,000 for the reserved interest in the securities. Upon the supposition that they have not, then they still have that interest, out of which to pay claims of creditors under the syndicate agreement. Its cash value cannot be judicially considered as less than a like proportion of the purchase price of the property at judicial sale. One-third of that purchase price ($501,000) is $167,666.66.

Upon that basis, appellant, for his syndicate, would still have in his hands, of the purchase price of the securities, with which to pay claims against the property, and represented by the money in the registry of the court, as follows:

Balance of $500,000 after paying Drexel, Morgan & Co..	$107,636 76
Value of one-third of railway property owned and possessed by appellant..................	167,666 66
Total in appellant's hands belonging to Crawford or the creditors..........................	$275,303 42

The above sum is largely in excess of all claims presented for allowance.

It is therefore seen, from the above showing of undisputed facts in the record, that neither appellant, nor his syndicate, have the slightest pecuniary interest in the moneys in controversy in this appeal; but that, on the contrary, it is a controversy solely between the appellees on the one hand, and Henry Crawford and his assignee, the First National Bank, two strangers to the record, upon the other, between whom appellant is a mere stakeholder.

The record discloses no request, by Crawford or the bank, that appellant should prosecute this appeal.

The syndicate agreement does not provide that appellant shall represent, in the foreclosure proceedings, the interest of Henry Crawford or his assignee. It simply recites that the syndicate "propose to foreclose the mortgage on said railway," etc. (Rec., 913.) Neither Henry Crawford nor the bank were parties to the cause. Crawford knew all about its progress, having been himself a witness for appellant on the reference to the special master, John Gray, and having acted as counsel for appellant throughout the proceedings in the taking of testimony.

Samuel M. Mickerson, the president of the bank, was called as a witness on that reference, was himself a large subscriber to the syndicate, and hence knew all about the pendency and progress of the cause. The appellant was himself one of the directors of the bank.

BRIEF AND ARGUMENT.

I.

THE DECREE OF FORECLOSURE AND SALE OF FEBRUARY 16, 1886, AS AMENDED BY THE SUPPLEMENTAL DECREE OF MARCH 2, 1886, WAS A FINAL DECREE.

It is submitted, that under the decisions of this Court, the true test to apply to the decree in question is, whether it determined the substantial controversy between appellees and appellant. The controversy, settled by that decree, was over the validity of appellant's mortgage and mortgage-debt, and the lien thereof upon the property of the insolvent corporation, as against appellees and other creditors.

To simplify the question under consideration, let the motions be here considered, as if the Cleveland Rolling Mill Company and Irwin were the only appellees making this motion. Appellant, in his bill to foreclose the mortgages, securing his bonds, having claimed that the latter were binding obligations of the corporation, and secured by a valid mortgage constituting a first lien on the property in controversy, made the two appellees parties defendant to his bill. They answered, setting up their respective claims, and stating the character and amounts thereof, and asserted a superior lien upon the property therefor, to the lien of the mortgage, which they alleged to be invalid as a lien upon the property, and that appellant's bonds were, as against appellees, fraudulent and void.

Testimony having been taken bearing upon the validity of the mortgage and the mortgage-indebtedness, as well as the character and amount of the indebtedness due to appellees, the court, upon those issues and that proof, decided and decreed in favor of appellees. It established, in favor of them, and all other creditors of the corporation whose claims had accrued for labor, material, *etc.*, either in the construction or operation of the railway, prior to the appointment of the receiver, a lien upon the property paramount to the lien of the mortgage. Instead of decreeing, specifically, that their claims *were* of that character, it decreed the lien generally in favor of *all* creditors whose claims came under the terms of the decree. But the evidence, before the court, showed, there was no controversy as to whether appellees' claims were of the character, which the decree fixed as requisite, in order to be entitled to the lien. They had each been reduced to judgment, and were liens upon the property in controversy. Had the Circuit court, *without* ordering a sale of the property, added to the decree an adjudication, finding the amount due to these appellees specifically, then there would be no doubt that such decree, as between them and appellant, was final.

But when the court, after having established that lien as superior to the mortgage, and decreed the latter to be a junior lien; and then proceeded, by the same decree, to enforce all the liens, by ordering a judicial sale of the property for their satisfaction, it thereby affixed to the decree an element of finality, of a more pronounced character, then it would have borne, had the amount of appellees' claims been definitely and specifically adjudged.

It is doubted that there is any well-considered case, where it is held, that a judicial sale of property to enforce a lien can be made, except in pursuance of a final decree. Such a case would be analogous to a marshal's sale, under an execution at common law, where there had been no final judgment.

When, by that decree, appellees' claims, (for the amounts which should thereafter be reported by the master and fixed by the court), were established as prior liens upon the property, they thereby represented a prior interest in the property itself, and were entitled to a prior satisfaction from the proceeds of sale of that property. As was said by Mr. Chief Justice Marshall, speaking for the court in *Rankin and Schatzell* v. *Scott*, 12 Wheat, 177 (at page 179): "The principle is believed to be "universal, that a prior lien gives a prior claim, which is entitled to prior satisfaction, out of the subject it binds, unless "the lien be intrinsically defective, or be displaced by some act "of the party holding it, which shall postpone him in a court "of law or equity to a subsequent claimant."

In this case, the corporation, being hopelessly insolvent, made no defense against the claims of appellees, and, being entirely controlled by appellant, admitted the validity of the mortgage, the mortgage-debt and the lien upon the property.

The controversy then, was wholly between appellant and appellees, as to whose claims represented the paramount interest in the property, and to be first satisfied out of its sale-proceeds.

If the appellant should prevail, any subsequent proceedings in the case, would be of no more interest to appellees, for the reason that the mortgage-debt, as represented by the bonds, was largely in excess of the value of the property.

If the appellees should prevail, then the appellant would be interested to keep down the amount of their claims, if that were a matter in dispute.

That it was not in dispute, is shown by the testimony of Henry Crawford, who was the sole witness called by appellant, testifying on that question. He admitted the amount and character of these claims. (Rec., 664, 665.)

It is not necessary to contend on behalf of appellees that if the amount of the mortgage-indebtedness had not been adjudged, and if the sale had not been ordered by the decree, that it would have been final.

The effect of those provisions in the decree, however, was such as to divest and destroy the prior lien of appellees upon the specific property, bound, as well as the junior lien of appellant thereon; and, put in place thereof, the proceeds to be derived from the sale.

When those proceeds should thereafter be brought into court for distribution, the court would have no guide for such distribution, except the provisions of the decree, which established the liens and their priorities, and by virtue of which adjudication, *and that alone*, was there any authority for the sale. That was an execution of the decree itself, in behalf of appellees first, and appellant second.

Appellant could then have appealed and had those questions of the validity of mortgages and mortgage-indebtedness, and priorities reviewed by this Court. That appears to have been the view his counsel took of the matter at that time, when his appeal from that decree was prayed for and allowed. That such appeal was not perfected, it is evident, from the record, was not due to any mistake of counsel, but arose from the business necessities of appellant and his syndicate, for a speedy sale of the railroad and property, and its acquisition and possession by them freed from all liens.

If that appeal had been perfected, no difficulty would have arisen about superseding the sale. Not only were the Rolling Mill company and Irwin before the court, claiming the validity, amount and character of the indebtedness due to them respectively; but each of the other appellees was also before the court in the same attitude. The record showed that in each case, the amount in controversy was sufficient to give this Court jurisdiction.

But appellant chose to proceed with the sale.

Under the following decisions and authorities it is submitted that he is too late to have the questions, settled by the first decree, reviewed here on an appeal from an order distributing of the proceeds of such sale.

In *Green* v. *Fisk*, 103 U. S. (13 Otto), 518, it is said by the Court (page 520): "In foreclosure suits it has been held that a "decree which settles all the rights of the parties and leaves "nothing to be done but to make a sale and pay over the proceeds, is final for the purposes of an appeal. The reason is, "that in such a case the sale is the execution of the decree of the "court, and simply enforces the rights of the parties as finally "adjudicated."

In *Winthrop Iron Co.* v. *Meeker*, 109 U. S., 180, the syllabus appears to state correctly the question decided: "Stock"holders in a corporation filed a bill praying to have proceed"ings at a meeting of the stockholders in a corporation and "proceedings of the board of directors, under a supposed "authority derived therefrom, set aside as fraudulent and void,

“ and a receiver was appointed. The court below made a decree “ setting aside the proceedings and appointed a receiver; and “ added to the decree a clause reserving to itself such further “ directions respecting costs, etc., as might be necessary to carry “ the decree into execution. An appeal being taken, a motion “ was made to dismiss the appeal on the ground that the decree appealed from was not a final decree: *Held:*

“ 1. That the decree appealed from was final as to all the “ relief prayed for in the bill.

“ 2. When a decree decides the right to and possession of the “ property in contest, and the party is entitled to have it immediately carried into execution, it is a final decree, although “ the court below retains possession of so much of the decree “ as may be necessary for adjusting accounts between the “ parties.”

Thompson v. *Dean*, 7 Wal., 342: The controversy in that case related to the ownership and transfer of certain shares of stock of a gas company, and to the rights of parties under contracts relating to the purchase, sale and transfer of the stock. The decree directed that D., the defendant below, and appellant above, transfer forthwith, upon the books of the company a certain number of shares of the stock to one of the plaintiffs below, appellees above, and ten shares to another.

It further directed that an account be taken and stated as to the amount paid, and to be paid for the stock, and as to the dividends accrued and to be credited under the contracts between the parties. From that decree an appeal was taken. *Held:* that the decree was final.

The Court, by the Chief Justice, on pages 345-6, said: “ In “ this case the decree directs the performance of a specific act, “ and requires that it be done forthwith. The effect of the “ act, when done, is to invest the transferees with all the rights

" of ownership. It changes the property in the stock as ab-
" solutely and as completely as could be done by execution on
" a decree for sale. It looks to no future modification or
" change of the decree. No such change or modification was
" possible after the term, except on rehearing or by bill of re-
" view in the Circuit court, or through appeal in this court."

" So far as the court below was concerned, the decree in the
" case determined the principal matter in controversy between
" the parties. And since the decree could not be changed
" except through a new and distinct proceeding, it determined
" that matter finally.

" Why, then, must it not be regarded as a final decree
" within the meaning of the acts of Congress providing for
" appeals?

" The 8th rule of practice to which we have referred
" certainly regards such a decree as that now under considera-
" tion as final in respect to the act to be performed.

" But it is insisted that this court has held that no decree
" which does not completely dispose of the whole cause is final,
" and that this decree, though disposing completely of the con-
" troversy as to the ownership of the stock, is not final, because
" it directs certain accounts to be taken.

" It is true that this court has always desired that appeals
" be taken only from decrees which are not only final but com-
" plete; and has, upon one occasion, at least, directed the atten-
" tion of the Circuit Courts to the expediency and importance
" of refraining from making final decrees on any part of a cause,
" however important, until prepared to dispose of it completely.
" Such a course would undoubtedly save much inconvenience,
" both to the Circuit Courts and this court, and diminish largely
" the expense of litigation to suitors."

" And it may be true, that under the influence of these con-
" siderations, the degree of finality essential to the right of

" appeal has been sometimes pushed quite to the limit of con-" struction. But we think that the current of decisions fully " sustains the rule laid down by the late Chief Justice in the " case of *Forgay* v. *Conrad*, and which we again declare in his " own language: ' When the decree decides the right to the " ' property in contest, and directs it to be delivered up by the " ' defendant to the complainant, or directs it to be sold, or " ' directs the defendant to pay a certain sum of money to the " ' complainant, and the complainant is entitled to have such " ' decree carried immediately into execution, the decree must " ' be regarded as a final one to that extent, and authorizes an " ' appeal to this court, although so much of the bill is retained " ' in the Circuit Court as is necessary for the purpose of adjust-" ' ing by further decree the accounts between the parties pur-" ' suant to the decree passed.'

" The reasoning in the case just cited fully vindicates this " rule, in our judgment, as a sound construction of the acts of " Congress relating to appeals, and is sustained by the authority " of several decisions.

" And it is quite clear that the appeal under consideration is " within this rule. The decree for which it was taken decided " the right to the property in contest, directed it to be delivered " by defendant to complainant by transfer, entitled the com-" plainant to have the decree carried immediately into execution, " leaving only to be adjusted accounts between the parties in " pursuance of the decree settling the question of ownership."

Railroad Company v. *Bradleys*, 7 Wallace, 575. In that case a railroad company, appellant, had filed a bill to enjoin the city of Washington and the Bradleys, appellees, as trustees, from making sale of certain property conveyed by the company to the Bradleys, as trustees, and under which they were about to sell the property to pay the mortgage debt. An injunction was granted. A decree was afterwards entered which ordered that the injunction be dissolved, "and *directed a "sale by the Bradleys, the trustees of the property in controversy, "according to the deed of trust, and the bringing of the proceeds "into court to abide further orders.*" From this decree an appeal was prayed, and on motion to dismiss the appeal because the decree was not final. *Held:* that the decree was final, and the motion to dismiss was overruled.

In *St. Louis, Iron Mountain & Southern Railroad Company* v. *Southern Express Co.*, 108 U. S., 24, the Opinion of the Court by the Chief Justice sufficiently states the point involved (pages 28, 29):

"As we have had occasion to say at the present term, in "*Bostwick* v. *Brinkerhoff*, 106 U. S., 3, and *Grant* v. *Phœnix "Insurance Co.*, 106 U. S., 429, a decree is final, for the purposes "of an appeal to this court, when it terminates the litigation between the parties on the merits of the case, and leaves nothing "to be done but to enforce, by execution, what has been determined. Under this rule we think the present decree is final. "The suit was brought to compel the railway company to do "the express company's business. The controversy was about "the right of the express company to require this to be "done on the payment of lawful charges. It was no part of "the object of the suit to have it definitely settled what these "charges should be for all time. The point was to establish the "liability of the railway company to carry. The decree requires the carriage, and fixes the compensation to be paid. It "adjudges costs against the railway company, and awards "execution. Nothing more remains to be done by the court "to dispose of the case. Inasmuch as the rates properly "chargeable for transportation vary according to circumstances, "and what was reasonable when the decree was rendered, may "not always continue to be so, leave is given the parties to "apply for a modification of what has been ordered in that "particular, if they, or either of them, shall desire to do so. In "effect the decree requires the railway company to carry for "reasonable rates, and fixes for the time being the maximum "of what will be reasonable.

"The controversy which the express company has had referred to the master, about the compensation to be paid for "the transportation during the pendency of the suit, does not "enter into the merits of the case. All such matters relate to "the administration of the cause, and the accounts to be settled "under the present order are of the same general character as "those of a receiver who holds property awaiting the final "disposition of a suit. They are incidents of the main litigation, but not necessarily a part of it. The supplemental "order made after the decree relates only to the settlement of "the accounts which accrued pending the suit."

In *Ray* v. *Law*, 3 Cranch, 179, Mr. Chief Justice MARSHALL, for the court, said:

"The court, however, is of opinion, that a decree for a sale "under a mortgage is such a final decree as may be appealed "from."

That principle has been followed by the court in *Whiting et al.* v. *The Bank of the United States*, 13 Peters, 6.

Bronson v. *La Crosse & Milwaukee R. R. Co. et al.*, 2 Black, 528; and
Marin v. *Lalley*, 17 Wallace, 14.

The decree, under consideration, is more analogous to the decree in the case of *Forgay* v. *Conrad*, 6 How., 201, than any other we have been able to find, upon the question of finality.

In that case an assignee in bankruptcy had filed a bill to have certain deeds for lands and slaves, made by the bankrupt, set aside as fraudulent, and for an account of the rents and profits thereof, whilst in the use and occupancy of certain of the defendants, and for an account of certain moneys alleged to have been received by one or more of the defendants from the bankrupt's estate.

The decree, appealed from, declared certain of the deeds therein mentioned to be fraudulent and void, and the lands and slaves therein mentioned to be delivered up to the complainant, and directed one of the defendants to pay complainant a certain sum of money, received from the bankrupt in fraud of his creditors. It further directed that complainant have execution for the several matters, in conformity with law and the practice prescribed by the rules of The Supreme Court of the United States. The decree further directed that the master take an account of the profits of the lands and slaves, ordered to be delivered up, from the time of the filing of the bill until the property was delivered, or to the date of the master's report; and also an account of certain money and notes, received by one of the defendants (who had not appealed) in fraud of the creditors of the bankrupt, and concluded with this language: "and so much of the said bill as contains or relates
" to matters hereby referred to the master for a report, is re-
" tained for further decree in the premises; and so much of the
" said bill as is not now, nor has been heretofore, adjudged and
" decreed upon, and which is not above retained for the purposes
" aforesaid, be dismissed without prejudice, and that the said
" defendants do pay the costs."

An appeal was taken by two of the defendants, one of whom had received from the bankrupt the deeds for the lands and slaves, (which were decreed to be set aside, and the lands and slaves to be delivered to the complainant for the benefit of the bankrupt's creditors), and the other of whom had received from his co-defendant, conveyance of a portion of such lands and slaves. That portion of the decree, which directed that an account be taken by the master of the rents and profits of the lands and slaves, so directed by the decree to be delivered up, only concerned the two defendants, who appealed from the decree. The defendants, who were directed by the decree to pay moneys to the complainant, and for which the complainant was decreed to have execution, did not appeal. The complainant below, appellee above, moved to dismiss the bill, *inter alia*, because the decree was not final. What the Court there says in passing upon that motion as to whether the decree was final, (on pages 202 to 207), is applicable here.

The court say: "Undoubtedly, it is not final, in the strict, "technical sense of that term. But this court has not hereto-"fore understood the words 'final decrees' in this strict and "technical sense, but has given to them a more liberal, and "as we think, a more reasonable construction, and one more "consonant with the intention of the Legislature."

The Court, after stating that, the decree, not only decided the title to the property in dispute, and annulled the deeds, under which the defendants claimed, but also directed the property in dispute to be delivered to the complainant, and awarded execution therefor, and that the bill was retained merely for the purpose of adjusting accounts referred to the master, say: "In all other respects the whole of the matters brought into "controversy by the bill are finally disposed of as to all of "the defendants, and the bill as to them is no longer pending "before the Court, and the decree which had passed could "not have been afterwards reconsidered or modified in re-"lation to the matters decided, except upon a petition for a re-"hearing, within the time prescribed by the rules of this court, "regulating proceedings in equity in the circuit courts. If "these appellants, therefore, must wait until the accounts are "reported by the master and confirmed by the court, they "will be subjected to irreparable injury. For the lands and "slaves which they claim will be taken out of their possession

" and sold, and the proceeds distributed among the creditors of " the bankrupt, before they can have an opportunity of being " heard in this court in defense of their rights. We think, " upon sound principles of construction, as well as upon the " authority of the cases referred to, that such is not the meaning of the acts of Congress."

Then follows the language quoted from the Opinion in *Thompson* v. *Dean*, cited *ante*.

In the same Opinion (pages 205-206), the Court deprecates the practice, pursued in that case, of decreeing the transfer of property or the payment of money until the cause is ripe for a decree upon all matters involved therein. It is intimated that it would have been better by an interlocutory order or decree, to have declared the opinion the court had formed as to the rights of the parties, and the decree it would finally pronounce upon the titles and conveyances in dispute. The Court say (page 205):

" The decree upon these matters might and ought to have " awaited the master's report; and when the accounts were " before the court, then every matter in dispute might have " been adjudicated in one final decree; and if either party " thought himself aggrieved, the whole matter would be " brought here and decided in one appeal, and the object " and policy of the acts of Congress upon this subject carried " into effect."

In the case at bar, had the decree not ordered the sale, free and clear from the liens of appellees and other creditors, as well of the lien of the mortgages of appellant; and had referred to the master the question as to the amount of the mortgage-indebtedness, as well as the claims of creditors; and upon the report of the master coming in, the amount of mortgage-indebtedness and the amounts respectively due to creditors entitled under the sixth paragraph of the decree had been determined, and then a sale directed; from such decree appellant could have appealed, and had every question finally disposed of in one appeal from the several decrees, in favor of all creditors, to whom amounts should be allowed for sums sufficient to give this Court jurisdiction. That, instead of doing so, he preferred an immediate sale of the railroad, and speedy possession thereof, free from all claims, and therefore insisted upon the immediate execution of the decree, and, for that reason, waived his right to the appeal at the proper time, is a matter which, it is submitted, constitutes no grievance or hardship to him.

II.

THE APPELLANT IS ESTOPPED FROM FURTHER CONTENDING THAT THE ORIGINAL DECREE OF FORECLOSURE AND SALE WAS NOT A FINAL DECREE, BECAUSE HIS TITLE TO AND POSSESSION OF THE PROPERTY THEREBY TO BE SOLD, RESTS UPON THE VALIDITY OF THAT DECREE.

If there are any grievances complained of by appellant on these appeals, which arose by reason of any error of the court in carrying out its decree of foreclosure, we concede that the case must be decided by this Court upon the merits, as to the last mentioned errors, if any there be. The appellant is in the situation of a purchaser, at a judicial sale, of property, sold by virtue of the provisions of a decree, establishing and foreclosing certain liens and ordering the property to be sold, himself receiving a part of the purchase money derived from such sale, and at the same time seeking to overthrow in this Court the sale of the property to himself, made in the execution of such decree. Because, as he, the complainant, became the purchaser, it requires no elaboration to demonstrate, that if the decree for foreclosure and sale shall be set aside, appellant's title as purchaser must fall with the decree.

In the case of *Crawshay et al. v. Soutter and Knapp*, 6 Wall., 739, a mortgage upon a land grant in favor of a railway company was foreclosed, and the property sold, and the purchasers at such sale (being bondholders who were secured by the mortgage) formed a new company on a plan of reorganization, in which the bondholders, represented by the purchasers, were to become interested. An appeal was taken from a decree confirming the sale to such purchasers by three of said bondholders, Crawshay, Oddie and Vose. The two former surrendered all their bonds and took certificates of stock. The latter, (who had been appointed by his co-creditors as trustee to organize the new company), however, yet had in his possession bonds for $5,000, for which the old certificates of the trustees entitled him to a corresponding amount of stock in the new company. A difference arose between him and his co-trustees, and the court, having confirmed the sale of the old road under the mortgage, he, Crawshay and Oddie, appealed from its action. Confirmation had been made subject to payment by the new company of his debt principal and interest. This Court, in deciding the case, said (pp. 740, 741): "Various exceptions were taken in the court " below, and are renewed here, to the report of the marshal of " the sale of the mortgaged premises, but it is unnecessary to " notice them, as Crawshay and Oddie are not in a condition " to avail themselves of them; and the rights of Vose, as owner " of the bonds or certificates, are protected by the order of " confirmation. Crawshay and Oddie were original bond- " holders under the land grant mortgage, but before filing their " exceptions to the report of sale, they had surrendered their " bonds to the trustees, appointed under the scheme for the

" adjustment of the affairs of the La Crosse Company; took " certificates of stock, and subsequently the bonds and stock of " the St. Paul Company" [the new corporation], "as provided " in the agreement for organizing it. *By doing this, they elected " to abide by the action of the trustees, and cannot now be " heard to interpose any objection to the confirmation of the " sale.*"

" Vose was one of the trustees appointed by the bondholders " of the LaCrosse company" [the old corporation], " to adjust " its affairs, and form a new company, but differences sprung up " between him and his co-trustees, resulting in their refusal to " co-operate with him. It is unimportant to inquire whether his " co-trustees were justified in their treatment of him, because, " before the confirmation of the sale by the court, the trust " agreement was substantially closed. All the bondholders, " except Vose, had exchanged their securities for the bonds and " stock of the St. Paul company. Vose, at the time of filing " exceptions to the report of the sale, was the owner of five " bonds of the LaCrosse company, for which he held the certificates of the trustees, entitling him to a corresponding amount " in bonds and stock of the new company. It is not necessary to " determine whether, by exchanging his old bonds for certificates " of stock in the new company, he was so far committed to the " adjustment scheme, as to prevent his withdrawal from it, for " in any aspect of the case, all rights that he could possibly " have under the land-grant-mortgage, were protected by the " court. The order of confirmation was expressly made subject to the payment to him by the St. Paul company, of five " bonds of $1,000 each, with all accrued and unpaid interest, " upon the surrender by him of the certificates of the trustees, and all claims for dividends. He certainly could reasonably ask no more than the payment of the principal and interest of his LaCrosse bonds—if he was unwilling to take the "stock and bonds of the St. Paul Company with their unpaid "dividends, according to the trust agreement,—and as the court "obliged the St. Paul company to pay him the full amount of "his LaCrosse bonds, it is hard to see how he is aggrieved by "the order of confirmation."

In *Farmers' Loan & Trust Co.* v. *Central Railroad Co. of Iowa*, 17 Federal Reporter, 758, a mortgage by a railway company of its property had been foreclosed, and the property sold to a purchaser, who had conveyed it to a new corporation, organized for the purpose of owning and operating the road. In the order of confirmation of sale, it was provided, *inter alia*, that certain indebtedness incurred by the court and its receivers, as well as damages resulting from injuries whilst the property was being operated by the court through its receives, were thereby made a first and paramount lien upon all of the property, money, credits, etc., to all other liens, and to the title acquired by the purchaser at the foreclosure sale, and by the conveyance to the Central Iowa Railway Company, which company, was, by that decree of confirmation, required to pay such claims with interest at seven per cent. per annum, within one year from the date of the decree of confirmation; and the court, for the purpose of enforcing the payment thereof, retained jurisdiction of the cause without any necessity for any other action or independent proceeding. The new company refused to pay certain of these claims upon the ground stated in the opinion of the court at page 760:

"It is, however, insisted by respondent's counsel that the "*original* decree of foreclosure made no provision for these "claims, and that it was not within the power of the court to "embody the above-quoted order in the decree confirming the "sale, and ordering a delivery of the property to the purchaser. "In other words, it is insisted that the order relied upon is void.

"It may have been voidable, but it is clearly not void. The "court had jurisdiction of the parties and of the property, with "power to make a conditional order of confirmation.

"The court was not bound to confirm the sale and relin-"quish control of the property without making provision for "pending claims. It had full authority to make such pro-"vision. Whether it was necessary to file a supplementary bill, "and allege the fact of the filing of these claims subsequently "to the rendition of a decree of foreclosure, if such was the "fact, is a question of no consequence now, for it is not one of "jurisdiction, and the most that could be maintained is that the "court erred in that respect. *The respondent did not raise the* "*question at the proper time. No appeal was entered. The* "*order was acquiesced in by the respondent. It accepted the* "*property; took its title under the very decree it now calls in* "*question. It cannot now be heard upon questions of mere* "*form, and which go only to the regularity of the proceedings.*"

Had the appellant perfected his appeal, prayed from the original decree of foreclosure and sale, without any *supersedeas*, it may be that what subsequently occurred would not have been a waiver of such appeal. But where he has become a purchaser of the property at the foreclosure sale *under such decree;* has received a part of the purchase money; has taken title to and possession of the property freed from the liens of appellees, which the decree foreclosed; and then on an appeal from an order of distribution of such proceeds to appellees, in pursuance of and in exact conformity to the terms of such decree or order of confirmation, seeks to have that decree for foreclosure reviewed, it is respectfully submitted that he has presented his grievances by a proceeding which cannot be sustained, and at a time too late, and under facts and circumstances, which estop him.

Again, it is insisted on behalf of appellees, that whatever may have been the character of the original decree in respect to whether it was final or not, in the sense of the acts of Congress, that the appellant cannot be heard to deny that it was a final decree. If we are correct in the proposition, that there can be no judicial sale of property made by virtue of a decree foreclosing liens thereon, only in cases where such decree is final, in the sense of the acts of Congress giving this Court jurisdiction, then whatever character the Court might give the decree of foreclosure and sale in this case, as between other parties, it is submitted that it will not allow appellant to be heard to claim that the decree was not final; because he himself has reaped the fruits of the execution of that decree, as and for a final decree, foreclosing his and appellees' liens upon the property, and selling the same to himself at judicial sale. His difficulty lies in the fact that he is insisting upon two things which are at war with each other.

If it should be granted that the decree of foreclosure and sale was not inherently a final decree, then it was error to have made a sale thereunder. By such sale appellees were deprived of their specific liens upon the property, established and fixed by the decree of foreclosure. By the the purchase, by appellant, he acquired the property freed from those liens. The proceeds of sale were in court for distribution in accordance with the priorities of lien as fixed by the decree, under which the sale took place. When appellant subsequently received the portion of the purchase money, represented by the first series of receiver's certificates, and amounting in principal and interest to $24,135.17, he had received the amount adjudged as a priority, from such sale-proceeds. When he applied for the amount of receiver's certificates of the second and third series, aggregating a total sum of $133,749.57, which were junior in lien (as fixed by the decree of foreclosure) to the lien of the claims of appellees and other creditors, he based his application upon the sole ground, that, after the withdrawal of that amount of money (or a credit of that amount of money upon his purchase price), there would be still left in the registry of the court, of such proceeds, sufficient to pay all the claims of the creditors, and the costs and other expenses of the cause. If appellant can now, on this appeal, be heard to contend against the validity and effect of the former decree of foreclosure and sale, no reason is seen, that where, in a suit to foreclose first and second mortgages upon property, and after a contest between the respective mortgagees, the priority of the lien of each is determined by decree, and the property sold under such decree, the sale confirmed, and the purchaser, being the holder of the junior mortgage as established by the decree, having taken title to and possession of the property, freed from the liens of both mortgages, cannot, after decree or order distributing the proceeds of sale, in exact conformity to the decree, on an appeal from so much of the decree for distribution as directs the payment to the senior mortgagee of the amount of his mortgage-indebtedness, re-litigate in this Court the whole question of priority, as established by the first decree of foreclosure and sale.

In the case of *Jerome* v. *McCarter*, 94 U. S. (4 Otto), 734, where a bill was filed for a foreclosure of a junior mortgage covering a certain canal, and the franchises of the corporation owning the same, together with a large tract of land, and a decree was rendered from which an appeal to this Court was taken, objection appears to have been made by the assignee in bankruptcy of the mortgagor-corporation, because the prior mortgagees were not made parties. In disposing of that objection the Court on page 736 say: "The prior mortgages were "not due when this bill was filed; and, without the consent "of those mortgagees, nothing more than the equity of redemp-

"tion could be sold under any decree made in the case, or under the decree which was sought. Nor is there any doubt "entertainable respecting the amount due under the prior mortgages. Indeed, the company is estopped by the provisions of "its mortgage, of which the complainant is trustee, from asserting that the entire amount of the two $500,000 mortgages, "and of the receiver's mortgage, was not outstanding when "the present mortgage was made. The full indebtedness "was acknowledged by making the junior mortgage expressly "subject to it, and as there is no evidence that any portion of "it has been paid, it is not admissible for the mortgagors or "their assignees in bankruptcy to deny it now."

See also:

Corcoran v. *The Chesapeake & Ohio Canal Company*, 94 U. S. (4 Otto), 741.

Chicago, Danville & Vincennes R. R. Co. v. *Fosdick, and Same* v. *Huidekoper*, 106 U. S. (16 Otto), 47.

Wetmore et al. v. *St. Paul & Pacific R. R. Co.*, 3 Fed. R., 177.

III.

THE DECREE APPEALED FROM WAS AN ORDER OF DISTRIBUTION OF THE PROCEEDS OF A FORECLOSURE-SALE OF PROPERTY, MADE IN PURSUANCE OF THE DECREE FOR FORECLOSURE; AND ON SUCH APPEAL THIS COURT WILL NOT REVIEW THAT DECREE FOR FORECLOSURE.

It is assumed that there can be no dispute over the proposition, in the light of the record, that this appeal was, *in terms*, only prayed and taken from the decree or order of October

9, 1886, directing the payment to each of the appellees of the respective amounts shown.

The prayer recites that appellant "prayed a separate appeal "from each of the decrees or orders of payment hereinbefore "recited in favor of the said" several appellees, naming them. These appeals were allowed by the court upon condition that appellant should file a bond with a certain penalty, "in each of "said allowed appeals." (Rec., 194.)

The appeal-bonds, as filed and approved, are in accordance with that order allowing the appeals. (Rec., 195-197.)

It is therefore submitted, that, by no construction or intendment, can those appeals, or the bonds filed, be considered as a perfecting of the appeal prayed for and allowed, from the decree of foreclosure and sale of February 16, 1886.

There is then presented the question: whether—after a decree of foreclosure and sale of property to satisfy mortgage and equitable liens, and after a decree confirming the sale—upon an appeal from a subsequent decree distributing the proceeds, the appellant can have the question of priority of lien, adjudged by the decree of foreclosure, reviewed by this Court?

If any question, under the adjudications of this Court, can be said to be open to inquiry at almost any stage of a chancery cause in the Circuit court, it is the question of jurisdiction of the partieular suit under the acts of Congress.

In *Turner* v. *Farmer's Loan and Trust Company*, 106 U. S. (16 Otto,) 552, an appeal was taken to this Court, from an order confirming the sale of mortgaged premises, sold under a final decree foreclosing the mortgage.

Upon that appeal, appellants assigned as error—*inter alia*—that the Circuit court did not have jurisdiction of the cause under the acts of Congress—the suit having been commenced in a State-Court and removed to the Circuit court. This Court held that upon an appeal from an order or decree confirming the sale, it could not consider that question of jurisdiction, because that qnestion entered into and formed part of the decree for foreclosure, which decree, on an appeal from the order confirming the sale, was not open for re-examination in this Court, except so far as to ascertain whether the conduct of the sale had been in accordance with such decree for foreclosure.

The Court in passing upon the propositions on behalf of appellants, urged againt the jurisdiction of the Circuit court said (pp. 554-555):

" Without admitting the soundness of these propositions, we " are of opinion that the questions of jurisdiction now raised " cannot be determined upon an appeal merely from the order " confirming the report of sale. Whether the suit was one " which the Farmers' Loan and Trust Company was entitled " to have removed, that is, whether the Circuit court of the " United States could rightfully proceed after the petition for " removal, accompanied by a sufficient bond, had been filed in " the State court, was a question directly presented to that " court for judicial determination upon the motion that the " cause be remanded. The denial of that motion constituted " an adjudication by the Federal court that the facts existed " which were necessary to give jurisdiction. And had the " question not been thus formally presented, it was the duty of " the Circuit court to dismiss or remand the cause, as justice " might have required at any time during its progress, when " it appeared that the suit did not really or substantially involve a dispute or controversy properly within its jurisdiction. *Williams* v. *Nottawa*, 104 U. S., 209. Further, the " final decree necessarily involved, and was itself a judicial " determination, as between the parties, that the suit was " one of which that court might take cognizance. That decree, unmodified and unchallenged by any direct appeal

" therefrom, should, upon this appeal only from the order con-
" firming the sale, be deemed conclusive, between the parties
" and their privies, as to all matters in issue and by it adjudi-
" cated, including the questions of jurisdiction now pressed
" upon our attention. Such, we think, must be the rule, espe-
" cially under existing statutes regulating the jurisdiction of
" the courts of the United States."

In the same case certain other objections were made to the proceedings in the court below, in disposing of which objections the Court, on page 557, say:

" We do not stop to consider whether these objections find
" any support in the record, since it is sufficient to say that, if
" any such errors exist, they necessarily inhere, some in the
" final decree of foreclosure and sale, and others in the orders
" which preceded it. They cannot be examined upon an ap-
" peal merely from the order confirming the report of sale.
" Our authority extends, as we have shown, no farther than
" to an examination of the exceptions filed by appellants to the
" report of sale, from the order confirming which this appeal
" is taken."

See also *Chicago, Danville and Vincennes Railroad Co.* v. *Fosdick*, 106 U. S., (16 Otto) 47.

Whiting v. *Bank of the U. S.*, 13 Peters, 6.
Hay v. *Schonley et al.*, 7 Ohio, part 2d, 417.
Allen et al., v. *Shepard*, 87 Ill., 314.

In proceedings for the foreclosure of a mortgage in a Circuit court it is believed that under the decisions of this Court there may be three separate appeals:

First. From the decree of foreclosure and sale, whereby all questions which were adjudicated in the court below in the progress of the cause, up to the entry of such decree, can be reviewed by this Court.

Second. An appeal from the order confirming the sale whereby can be reviewed by this Court the proceedings in the court below, subsequent to the entry of the foreclosure-decree up to and including the order confirming the sale, and that this Court can examine the decree for foreclosure and sale, only so far as to ascertain whether the sale has been conducted and made in conformity with the first decree.

Third. From the decree or order distributing the proceeds of the sale, upon which appeal this Court will examine the decree confirming the sale, to ascertain whether the Circuit court distributed the proceeds in accordance with such decree of confirmation.

In this case it is sought, on an appeal from the order of distribution, to have this Court review, re-examine, and revise the original decree for foreclosure and sale, which it is submitted, under the acts of Congress, and the adjudications of this Court, cannot be done. And this, without any reference to the waiver by appellant, and his estoppel, arising from the fact that he himself procured the execution of the decree of foreclosure by the sale of the property, became its purchaser, and received part of the proceeds of the sale.

IV.

THE APPELLANT WAS NOT AGGRIEVED BY THE DECREE AND ORDER OF PAYMENT APPEALED FROM, BECAUSE HE WAS NOT PECUNIARILY INTERESTED IN THE MONEYS ORDERED TO BE PAID TO APPELLEES, BUT IS PROSECUTING THIS APPEAL SOLELY IN THE INTERESTS OF HENRY CRAWFORD AND HIS ASSIGNEE, THE FIRST NATIONAL BANK OF CHICAGO, WHO WERE NOT PARTIES TO THE RECORD, AND APPELLEE DOES NOT LEGALLY REPRESENT THEM AS THEIR TRUSTEE, AGENT OR OTHERWISE.

A careful consideration of the "syndicate agreement," which is appellant's muniment of title to the bonds sought to be foreclosed, shows clearly, that when appellant had secured title to and possession of, the railway-property under the decree of foreclosure and sale, and the confirmation of the sale, and had withdrawn from the proceeds of the sale the amount of the receiver's certificates allowed to him on his bid, that he had secured for himself and his syndicate all that was contemplated in the syndicate agreement; and that any further controversy in the cause over the balance of the purchase money, derived from the sale, was wholly between, and wholly concerned the appellees, and Henry Crawford and his assignee or pledgee, the First National Bank of Chicago; and that neither of them, as shown by the record, has requested appellant to prosecute this appeal. And in the statement of facts it is shown clearly, that if the moneys ordered to be paid to appellees, are by them received, neither appellant nor his syndicate are in any wise affected thereby. It is therefore submitted that appellant is prosecuting this appeal without any grievance which he, or the syndicate, which he represents, can complain of.

See

Crawshay v. *Soutter & Knapp*, 6 Wallace, 739.
Jerome v. *McCarter*, 94 U. S. (4 Otto), 734.
Farmers' Loan and Trust Company v. *Waterman*, 106 U. S. (16 Otto), 265.

In the case last above cited, a decree had been rendered in favor of the appellant as trustee in a mortgage, securing the bonds of a railway company and foreclosing the mortgage, also a subsequent decree, directing a sale of the mortgaged property (subject to certain claims of creditors and other sums of money, which might be thereafter adjudged by the court against the property, directed to be sold), and that the purchasers, in addition to the amount of the purchase-money bid, should assume the payment of such claims. Those claims were subsequently examined and reported upon by the master, and upon his report, exceptions having been filed by the Trust Company and the purchasers, upon the hearing of the same, the court decreed in substance, that the purchasers should pay the amounts found by the court and decreed in favor of such creditors and claims. On a motion to dismiss the appeal, upon the ground, that it had been taken from the allowance and order of payment of a number of claims each less than $5,000, the Court, in passing upon that motion to dismiss, by Mr. Chief Justice Waite, say, on pages 269-270:

" To our mind it is clear the Trust Company has no interest in " the questions arising under this appeal. That company represented the bondholders for all the purposes of the fore- " closure of the mortgages under which it was trustee, but the " interest of the bondholders in the suit ended when the property was sold and the proceeds were distributed. As the " purchasers took the property subject to the lien, if any there " was, of the back pay claims, the bondholders, as bondhold-

"ers, cannot in any manner be affected by the result of the "proceedings to determine whether such lien exists, and if so, "to what extent. All questions as to such matters are between "the purchasers and intervening petitioners alone. The de-"cree ordering a sale subject to the claims was entered on the "motion of the trust company, and the appeal is in express "terms confined to the order establishing the claims against the "purchasers. If, by reason of the agreement under which the "purchase was made, any of the bondholders secured by "the mortgages to the Trust Company are entitled to share "in the property, they are for all such purposes represented "by the purchasing committee, and not by the mortgage trus-"tee. The trust created by the mortgage was fully executed "when the foreclosure was complete. After that the purchas-"ing bondholders became purchasers of the mortgaged prop-"erty, and their rights are to be determined accordingly.

"Neither is it of any importance that in the decree of sale as "modified, as well as in that originally entered, a right of ap-"peal by the Trust Company was expressly reserved. Only "parties to a decree can appeal. If a party to the suit is in no "manner affected by what is decreed, *he cannot be said to be a* "*party to the decree.* A reservation of the right to appeal has "no effect if there is no decree from which an appeal such as has "been reserved will lie. In the present case, as has already been "seen, the several claimants or intervenors and the purchasing "committee were the only parties to the suit affected by the de-"cree of October 31st. The purchasing committee became "parties by their purchase to the extent that was necessary to "protect their rights in the property purchased against any "further orders to be made in the execution of the decree under "which they bought. *The Trust Company, by consenting to the* "*decree ordering a sale subject to the back pay and supply liens,* "*in effect voluntarily abandoned that part of the litigation, and*

" *left it to be carried on thereafter between the several claimants* " *and the purchasers alone.* Neither the Trust Company nor " those it in equity represents can gain or lose by either a reversal or affirmance of the decree appealed from."

It is submitted, that if the Trust Company in that case, as complainant, representing the bondholders, voluntarily abandoned the part of the litigation by which the liens of the creditors were established as liens against the property, when that company consented to a sale, then complainant in this case (who has prayed his appeal solely as complainant) *a fortiori*, by accepting part of the proceeds of the sale and title to and possession of the mortgaged premises, has abandoned that part of the litigation in the case at bar which concerns the priority of the claims of appellees.

Respectfully submitted.

JOHN S. COOPER,
Attorney for Appellees.

A. C. HARRIS,
W. H. CALKINS and
E. W. TOLLERTON,
Of Counsel.

120-649

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1886.

No. 1,280.

HENRY H. PORTER,
Appellant,
vs.
THE PITTSBURGH BESSEMER STEEL COMPANY (Limited); THE CLEVELAND ROLLING MILL COMPANY; THE SMITH BRIDGE COMPANY; CRERAR, ADAMS and COMPANY, and VOLNEY Q. IRWIN,
Appellees.

Five several Appeals from the Circuit Court of the United States, for the District of Indiana.

PETITIONS FOR REHEARING

BY THE PITTSBURGH BESSEMER STEEL COMPANY (LIMITED); THE CLEVELAND ROLLING MILL COMPANY; CRERAR, ADAMS AND COMPANY; VOLNEY Q. IRWIN AND THE SMITH BRIDGE COMPANY, PETITIONERS.

WILLIAM H. CALKINS,
E. W. TOLERTON,
JOHN S. COOPER,
ATTORNEYS FOR PETITIONERS.

BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE ST., CHICAGO.

IN THE

UNITED STATES SUPREME COURT,

OCTOBER TERM, A. D. 1886.

No. 1,280.

HENRY H. PORTER, *Appellant,* *vs.* **THE PITTSBURGH BESSEMER STEEL COMPANY (Limited); THE CLEVELAND ROLLING MILL COMPANY; THE SMITH BRIDGE COMPANY; CRERAR, ADAMS and COMPANY, and VOLNEY Q. IRWIN,** *Appellees.*	**Five several Appeals from the Circuit Court of the United States, for the District of Indiana.**

PETITIONS FOR REHEARING BY APPELLEES.

And now come again The Pittsburg Bessemer Steel Company (Limited), The Cleveland Rolling Mill Company, Crerar, Adams & Company and Volney Q. Irwin, appellees in the cause above entitled, and jointly and severally petition this Honorable Court for a rehearing of the judgment which has heretofore been entered by this Court in said cause, as contained in the Opinion of the Court filed herein, and for a rehearing of said cause; and they state the following grounds for such rehearing:

IN THE

UNITED STATES SUPREME COURT,

OCTOBER TERM, A. D. 1886.

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First. Your petitioners aver that there is manifest error in the opinion and judgment of this Court in the above cause in this: In holding and adjudging that the appellant was entitled as against these petitioners to the entire proceeds derived from the sale of the property of the Chicago and Great Southern Railway Company, then being insolvent, by virtue of being the owner of all the bonds of that company, secured by its mortgages upon such property; whilst at the same time such appellant was himself liable to said corporation for the use and benefit of petitioners and other creditors of said company in the sum of $707,550, by reason of his ownership of the unpaid capital stock of said company to that amount, and which he acquired and became the owner of along with said bonds, and for a consideration common to both; and this in a cause to which all the creditors of the corporation were parties, and in which the court had appointed a receiver of the company and its property before appellant had either paid a dollar for said capital stock and mortgage-bonds or filed his bill for foreclosure of the mortgage.

Second. They further aver that there is manifest error in the opinion and judgment of this Court in the above cause in this: In holding that appellant acquired said bonds from Drexel, Morgan & Co. as pledgees thereof, and not from Henry Crawford as owner; the evidence in said cause, and also the written agreement between said appellant and Crawford, dated December 26, 1884, showing that appellant bought said bonds from said Crawford, as owner, and for a consideration more than $300,000 greater than appellant and Samuel M. Nickerson had agreed to pay Drexel, Morgan & Co. therefor; and which written agreement, by its terms, superseded and became a substitute for the former agreements of June 25, 1884, between said appellant, Nickerson, Crawford and Drexel, Morgan & Co. And your petitioners respectfully refer to said agreement of December 26, 1884, called the "Syndicate Agreement," as conclusive evidence of this, their contention.

Third. They further aver that there is manifest error in the opinion and judgment of this court in this: That it is held by this Court that appellant succeeded to the rights of Drexel, Morgan & Co., as pledgees of the bonds, and that appellant was an innocent holder thereof; and that inasmuch as the remaining proceeds of sale of the railway property in the registry of the Circuit court is only $325,194.27, and that appellant's claim on January 12, 1885, for the amount he paid Drexel, Morgan & Co. on that day, was $392,363.24, there was no surplus to be paid to your petitioners. Whereas, your petitioners show that the amount of appellant's purchase-price from Henry Crawford was $750,000, or an amount exceeding that paid by appellant to Drexel, Morgan & Co. with interest thereon to the date of the decree of the Circuit court, of over $300,000, which sum was part and parcel of the said moneys in the registry of the court by the terms of said contract of December 26, 1884, between said Porter and Crawford, and for which said Porter was and is in fact a mere stakeholder, as between said Crawford on the one side. and these petitioners and the other creditors of said railway company on the other. And your petitioners aver that as between themselves and said Crawford and The First National Bank of Chicago, as his assignee with notice, they have an equity to be paid out of said sum, in the registry of the court in preference to said Crawford or said bank, and prior to said appellant as representing them.

Fourth. They further aver that there is manifest error in the opinion and judgment of this Court in this: That it is held by the Court, 1st, that there was no bad faith, irregularity, deceit or fraud in the execution of the mortgages, or in issuing of the bonds thereunder; and 2d, that such bonds represented all the money that had ever been paid by the railway company for the Chicago and Block Coal Railroad, and for the construction of the sixty miles of the new road from Attica to Fair Oaks, excepting only some $40,000 or $50,000 received from aid voted by townships.

As to the first point, Henry Crawford, to whom the first million dollars of bonds were delivered in the latter part of December, 1881, was at the time of their delivery, the owner, by purchase and assignment, of all the shares of stock of the corporation (including the shares of five out of nine directors composing the board), with the exception of $10,000 of stock owned by William Foster; and was such owner and holder of said stock, including that of such five directors, on the 29th day of October, 1881, when the directors passed the resolution authorizing the execution of the mortgages and bonds. At the same time the laws of the State of Indiana, under which the company was incorporated, required that every director should be the owner, in good faith, of stock in the corporation, and Henry Crawford himself knew that five out of the nine directors had no stock, because he himself held and owned it. From the 23d day of June, 1881, until the 15th day of March, 1882 (whilst the original board of directors were in office), Crawford had in fact the actual domination and control of this corporation, whose board of directors and officers did precisely as he dictated, with the one exception of refusing to authorize a proposed construction contract between the company and him. The reason for such refusal, as found by this Court in its opinion, was, because Foster prevented it for the purpose of compelling Crawford to buy the remaining $10,000 of stock of the company still owned by Foster; and yet the Court cites in the Opinion, this one exception to Crawford's domination and control of the board of directors, as evidence that Crawford did not have such domination or control. Whilst during the period above, Crawford made contracts for purchases of material in the name of the corporation, appointed officers for it, superintended the construction of the road, and was recognized by the board of directors as in authority and control of the construction of the road, although he, as yet, had no contract with the company therefor. And during the same period he prepared and caused to be passed the resolution of the directors of October 29, 1881, authorizing the mortgage and bonds, and prepared the mortgage and bonds; and by reason of his control he procured the delivery of the million dollars of the bonds to himself.

As to the 2d point, the bonds in suit represent, not only the money paid for the Chicago and Block Coal road, the money paid by Drexel, Morgan & Co., and the money paid by Crawford, but also, it is submitted by your petitioners, represent the indebtedness due to your petitioners and other creditors of said company, who furnished material and did labor, amounting in the aggregate to over $200,000.

The fourth condition in the memorandum delivered by Foster to Crawford's representative along with the million dollars of bonds, provided that out of the proceeds of such bonds, Crawford should furnish the necessary amount of money to pay the debts contracted since the 1st of July, 1881, and to complete the grading and superstructure, and to finish and equip the line of road from the junction with the Air Line road to Attica, being the line of road upon which the material and labor of your petitioners was expended. Your petitioners, therefore, respectfully submit that even upon the principle that the bonds were valid, they were placed in said Crawford's hands in trust for the very purpose of paying to your petitioners and other creditors the moneys now due them.

Fifth. They further aver that there is manifest error in the judgment and opinion of this Court in this: In holding that the decree of the Circuit court, which directed payment out of the proceeds of the railroad-property to your petitioners on account of their just debts against the corporation, in preference to the bonds held by the appellant, should be reversed, and that petitioners should receive no part of such proceeds, because the appellant succeeded to the equities of Drexel, Morgan & Co., and Dull & McCormick, held by this Court, in the opinion, to have been pledgees in good faith. Whereas, your petitioners submit, as herein above suggested, that appellant is the representative of Henry Crawford and his assignee, with notice, the First National Bank of Chicago, and that this controversy should be treated as one between Henry Crawford and your petitioners. In such view of the case, your petitioners submit, that, as Henry Crawford, by his construction contract with the corporation, had agreed to build the railroad in question, as a condition and consideration for receiving any bonds whatsoever, that he should furnish the material and the labor, and pay therefor; and that your petitioners, as against said Crawford and his his assignee with notice, said bank, have a prior equity and lien upon the proceeds derived from the sale of said railroad property, to the said Crawford and said Bank.

Sixth. They further aver that there is manifest error in the Opinion and judgment of this Court in this: In holding and decreeing that petitioners can have no part of the proceeds of the railroad-property in payment of their claims for its construction, and the securities representing which were owned by Henry Crawford, who employed these petitioners to furnish labor and material used in such construction and who, after making the two successive pledges to Dull and McCormack and Drexel, Morgan & Co., of such securities, finally sold them to appellant under a written agreement of sale, by the terms of which, all the purchase money—after the payment of the amount for which they were pledged—was to be held by appellant (to an amount exceeding $300,000) to abide the adjudication of the Court, as to whether such proceeds should be paid to said Crawford or to these petitioners and other creditors of the railroad company. And your petitioners humbly submit that in this controversy over the moneys in question, they have a prior equity to said Crawford, for the building of whose railroad they furnished their material and labor; and that this prior equity exists in their favor, not only by the principles of courts of equity (which look through the forms, to the substance of things done), but rests upon natural justice.

Seventh. They further aver that there is manifest error in the Opinion and judgment of this Court in this: In holding that it does not lie in the mouths of these petitioners to raise the objection as to the absence of a legal board of directors, because, if, as held by the Court, the mortgages and bonds are invalid for want of such legal board, and for want of the legal existence of the corporation, the contracts of these petitioners are invalid for the same reason, and the consolidation with the Chicago and Block Coal Company's road would be void, and that road would be freed from all debts incurred by the Chicago and Great Southern Railway Company; whereas your petitioners show:

1st. That they were strangers to the Chicago and Great Southern Railway Company, and dealt with it at arm's-length.

2d. That the respective amounts decreed to them by the Circuit court was upon evidence of what the labor and materials furnished by them—and which actually went into the construction of the road, and of which appellant and Henry Crawford got the benefit—were reasonably worth, regardless of any contracts with the company therefor, and as upon a *quantum meruit*.

3d. That every person to whose possession said bonds came, either as owners, pledgees or purchasers, knew that a majority of the members of the board of directors were not the owners of any capital stock of said railway company, for the reason that each one of them—Dull and McCormack, Drexel, Morgan & Co., and appellant—as stated in the opinion of the court, successively contracted in writing for every share of stock of the corporation along with the bonds; and every share of stock, save four, and said bonds, were successively delivered to them respectively. Wherefore your petitioners submit that whilst they were each dealing with said corporation in good faith, without knowledge that a majority of its board of directors held no stock in the company, and that Henry Crawford dominated and controlled the corporation, the several holders of the bonds *had* such knowledge, and were not, nor were any of them, innocent holders of said bonds in good faith.

Wherefore, your petitioners respectfully pray that a rehearing in this cause may be granted and such further order and decree made as to your Honors shall seem meet. And your petitioners will ever pray, etc.

THE PITTSBURGH BESSEMER STEEL COMPANY
(LIMITED),
THE CLEVELAND ROLLING MILL COMPANY,
CRERAR, ADAMS & COMPANY and
VOLNEY Q. IRWIN,
Petitioners.

By W. H. CALKINS and
JOHN S. COOPER,
Their Attorneys.

We are of opinion and so certify, that this cause is proper to be reheard touching the matters mentioned in the foregoing petition, if your Honors shall think fit.

WILLIAM H. CALKINS and
JOHN S. COOPER,
Of Counsel for said Petitioners.

And your petitioner, The Cleveland Rolling Mill Company, severally petitions for a rehearing of said cause, and of the judgment and opinion rendered therein against it; and as grounds for such rehearing, states:

First. Your petitioner avers that there is manifest error in the opinion and judgment of this Court in the above cause of your petitioner, in this: In finding, as a fact in said cause, against your petitioner, that it knowingly received, on account of its claim, money, which came directly from Drexel, Morgan & Co., as a result of the pledge of the bonds to them. And your petitioner states that the only evidence in said cause to that effect was introduced by said appellant, and was the testimony of Henry Crawford, who testified that he told your petitioner's president, William Chisholm, in the banking office of Drexel, Morgan & Co. in the city of New York, whilst he was negotiating for the loan from them, just exactly what his business there was, and the full and precise nature of it. But said Chisholm testified that whilst he did meet said Crawford at that place, that said Crawford only told him, Chisholm, that he was negotiating with Drexel, Morgan & Co. to get money to pay the indebtedness due to your petitioner, but that he, said Crawford, did not refer to any negotiation on the pledge of the bonds of said railway company in any way whatsoever. And your petitioners submit that, under the facts in the record in this cause, and without any reference to the credibility of the two witnesses, inasmuch as no evidence whatever has been introduced, showing that your petitioner, or any of its officers or agents knew anything about the construction contract between said Crawford and the railway company, and that the testimony of said Crawford was introduced by the appellant, by way of estoppel upon your petitioner, that under the rules of courts of equity the testimony of one witness affirming the fact, and the other denying the same, such fact was not proven, and that the whole record shows that such was not the truth.

Second. It further avers that there is manifest error in the opinion and judgment of this Court in this: In holding that the lien of the bonds of appellant upon the proceeds of the sale of said railroad property is superior to the claim of your petitioner, for the just indebtedness due to it. And your petitioner shows that its indebtedness had wholly accrued on the 5th of December, 1881; and that the first million of dollars of bonds delivered to Henry Crawford were not delivered until after that time; that at the time the bonds were so delivered, in the latter part of December, 1881, to said Crawford, he, by his own testimony, had been furnishing money and making contracts for material and labor for the construction of the road, without any contract for repayment thereof with the company. As stated by him under oath, when being examined as a witness for appellant:

> "I went on and furnished the money at first, simply because I was acting under the impression that I practically owned that piece of property, and while I was not formally in control of it, yet that whenever I desired to control it, that the control was obtainable."

And your petitioner submits that under such circumstances, the said Crawford had no right in equity to obtain a first lien upon said railroad property, by procuring the bonds, secured by mortgage thereon, as against your petitioner's just claims against said railroad company.

Third. Your petitioner avers that there is manifest error in the judgment and opinion of this Court in decreeing that your petitioner shall not be allowed any part of the proceeds derived from the sale of said railroad property, in this: That by the memorandum agreement between the said railway company and Henry Crawford, as to applying proceeds of the issue of the million dollars of bonds delivered to said Crawford's representative by William Foster, as president of said railroad company, in the fourth clause thereof, it was provided, that said Crawford should furnish the necessary amount of money to pay the debts contracted since the first of July, 1881, included in which, was the debt due your petitioner, and unpaid at that time.

Wherefore your petitioner humbly prays this Court that a rehearing may be granted to it of the judgment and opinion of this Court, pronounced against it, and that it may have such further and other relief as to your Honors shall seem meet. And your petitioner will ever pray, etc.

THE CLEVELAND ROLLING MILL COMPANY,
By JOHN S. COOPER,
Its Attorney.

We are of the opinion, and therefore certify, that the foregoing petition for rehearing contains grounds for a rehearing of said cause as to said petitioner, if this court shall see fit.

WILLIAM H. CALKINS and
JOHN S. COOPER,
Of Counsel.

And your petitioner, Volney Q. Irwin, severally petitions the court for a rehearing of the judgment and opinion rendered against him by this Court in the above cause, and as grounds for such rehearing respectfully shows:

First. Your petitioner avers that there is manifest error in the opinion and decree of this Court in the above cause in this: In holding that your petitioner had no lien upon the said railroad property, nor upon the proceeds of the sale thereof, for the reason that the mortgages securing said bonds were valid liens thereon, as against your petitioner, for the reasons and because of the facts as stated in said opinion. But your petitioner respectfully shows that he had a special ground of lien for the amount of his claim against the said railroad property prior to the mortgages thereon, the facts of which are not stated in the opinion filed herein, nor any specific judgment or conclusion of the Court given thereon, in said opinion.

That your petitioner, by virtue of the lien laws of the State of Indiana, recovered a judgment for the amount of his said claim against said railway company, which is admitted to have been prior to the lien of said mortgages. That by virtue of said judgment and lien a sale of a section of said railroad, extending through the county where said judgment was rendered, was made for the sum of $500, from which redemption was attempted to be made, by John C. New, trustee in the mortgages; and your petitioner claimed in the brief filed by his counsel in this case, that said redemption did not destroy the lien of his judgment, at least for the said amount of over $11,000: 1st. Because the redemption laws of the State of Indiana were wholly inapplicable to such a case; and 2d, that John C. New, the trustee in said mortgage (who attempted to redeem from said judgment), never complied with the redemption law of Indiana so as to destroy the lien of your petitioner.

And your petitioner respectfully submits to the Court that his said judgment was and continued to be a lien upon said railroad, prior to the lien of said mortgages, securing the bonds of said appellant, and that he was and is entitled, by reason thereof, to be paid the amount of his said claim, as decreed by the Circuit court.

Wherefore your petitioner humbly prays this Honorable Court that a rehearing of said cause, as against him, may be had, and that such other order or decree may be made therein as to your Honors shall seem meet. And your petitioner will ever pray, etc.

VOLNEY Q. IRWIN, by
WILLIAM H. CALKINS, *His Attorney.*

We are of opinion, and so certify, that the grounds stated in the above petition of Volney Q. Irwin, for a rehearing of his said cause are well founded, and that a rehearing therein should be granted, if your Honors shall see fit.

WILLIAM H. CALKINS, and
JOHN S. COOPER, *of Counsel.*

And your petitioner, The Pittsburgh Bessemer Steel Company (Limited), for itself, separately, petitions this Honorable Court for a rehearing of the judgment which has been entered by this Court against it in this cause, as contained in the Opinion filed herein, and for a rehearing of said cause as to it; and it states the following special grounds for such rehearing:

First. Your petitioner submits that there is manifest error in the opinion and decree of this Court in the above cause in this: In deciding and holding that said cause should be reversed as to your petitioner for error of the Circuit court contained in the sixth paragraph of the interlocutory decree of the Circuit court of February 16, 1886; whereas your petitioner maintains and submits, that under the issue made by the intervening petition of your petitioner and the evidence relative thereto in the record, the final decree of the Circuit court of October 9, 1886, was as to your petitioner a just and proper decree, free from error and in consonance with all legal and equitable principles.

Second. Your petitioner submits that there is manifest error in the opinion and decree of this Court in the above cause in this: In deciding and holding that the principles and rules stated in the Opinion of the court are controlling in respect of the issues and grounds upon which your petitioner claimed and insisted that there are, in the above cause, special equities resting with your petitioner in virtue of which it was entitled to preference of payment out of the fund in the registry of the Circuit court, whereas your petitioner maintains and submits that irrespective of the validity of the mortgage and bonds of the Chicago and Great Southern Railway Company, and conceding the fact that the appellant, Henry H. Porter, was a *bona fide* purchaser of said bonds for value, and the further fact that said mortgage and bonds were executed, and said mortgage was recorded and $1,000,000 of said bonds were issued before your petitioner's contract for the sale of rails to said railway company was consummated, and the further fact that the railroad of said railway company was in process of construction at the time of the consummation of said contract for the sale of said rails, still said Henry H. Porter, as mortgagee, took and held a lien under said mortgage upon the rails sold by your petitioner to said railway company, that was subordinate and junior to the lien of your petitioner thereon, which was secured by the retention of physical possession of said rails by your petitioner, until without its consent or knowledge, said physical possession of said rails was fraudulently taken from it by said railway company, and your petitioner's said lien should in equity be preserved and protected.

Wherefore, your petitioner respectfully prays that as to it a rehearing in this cause may be granted, and such further order and decree made as to your Honors shall seem meet.

And your petitioner will ever pray, etc.

THE PITTSBURGH BESSEMER STEEL
COMPANY (LIMITED),
By JOHN S. COOPER,
Its Attorney.

We are of opinion, and so certify, that this cause is proper to be reheard, touching the matters mentioned in the petition, if your Honors shall think fit.

WILLIAM H. CALKINS and
JOHN S. COOPER,
Of Counsel for above Petitioner.

Your petitioner, the Smith Bridge Company, for itself, separately, petitions this Honorable Court for a rehearing of the judgment which has been entered in this cause as contained in the opinion filed herein, and for a rehearing of said cause as to it; and it states the following grounds for such rehearing:

That in its intervening petition, filed in this cause in the Circuit court, no issue was made in regard to the validity of the bonds held by the complainant Porter, nor were the said bonds in any manner contested by your petitioner in its petition, but your petitioner has relied solely upon the special equities of its claim. And your petitioner may now concede that the Opinion and decree of this Court, as announced, is correct, so far as it holds that said appellant's bonds are valid; and still your petitioner avers that in holding that said appellant's bonds are prior and superior to the equity of your petitioner's lien, there is manifest error in said opinion and decree, for the following reasons:

First. Your petitioner avers that there never was any delivery of the said bridges or bridge-material by your petitioner to said Chicago and Great Southern Railroad Company. The contract between your petitioner and said railroad company required the bridges to be completed where they now stand; and that upon completion your petitioner was to retain the possession and title until payment was made in full. The evidence (page 823) shows that your petitioner has never consented to any delivery. And your petitioner, therefore, avers that in holding said bonds of appellant to be a prior lien on said bridges to the claims of your petitioner, there is manifest error.

Second. Your petitioner avers that at the time the appellant, Porter, purchased said bonds, and long prior thereto, he had full knowledge and notice of your petitioner's equities under said contract and lien; and that the First National Bank of Chicago likewise had such knowledge and notice. (Evidence, pages 911, 925, 926.) And your petitioner therefore avers that there is error in the decree of this Court in holding that said Porter was an innocent holder of said bonds as against your petitioner's claim.

Third. Your petitioner avers that the syndicate agreement, so called, by which the appellant, Porter, became the purchaser and owner of said bonds, recognized the equities of your petitioner's claim, and especially provided for its payment (Record, page 912); that the Circuit Court having found that your petitioner's claim was paramount and prior to said bonds, the provisions of said syndicate agreement for the payment of your petitioner's claim then became operative and conclusive. And your petitioner avers that there is error in the decree of this Court in holding that the said bonds in the hands of said Porter are a superior lien to your petitioner's claim, notwithstanding the provisions of said agreement to pay the same.

Fourth. There is error in said opinion and decree in holding that your petitioner had any knowledge of the loan from Drexel, Morgan & Co.; or knew that they were receiving money obtained from a pledge of the bonds to Drexel, Morgan & Co.

Wherefore, your petitioner respectfully prays that as to it a rehearing in this cause may be granted, and such further order and decree made as to your Honors shall seem meet.

And your petitioner will ever pray, etc.

THE SMITH BRIDGE COMPANY,
By E. W. TOLERTON, *its Attorney.*

We are of opinion and so certify that this cause is proper to be reheard touching the matters mentioned in the above petition, if the Court shall think fit.

E. W. TOLERTON, and
JOHN S. COOPER,
Of Counsel.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. [illegible]

No. [illegible]

[illegible] H. PORTER,
Appellant,
vs.
[illegible]
Appellee.

Appeal from the [illegible] Court of the United States for the District of [illegible]

BRIEF

[illegible]

[illegible] W. [illegible]
Attorney for [illegible].

[illegible]

IN THE

UNITED STATES SUPREME COURT.

OCTOBER TERM, A. D. 1886.

NO. 1280.

HENRY H. PORTER, *Appellant,* *vs.* **THE PITTSBURGH BESSEMER STEEL COMPANY, (Limited); THE CLEVELAND ROLLING MILL COMPANY; THE SMITH BRIDGE-COMPANY; CRERAR, ADAMS and COMPANY, and VOLNEY Q. IRWIN,** *Appellees.*	*Five several Appeals from the Circuit Court of the United States, for the District of Indiana.*

BRIEF ON BEHALF OF THE SMITH BRIDGE COMPANY ON PETITION FOR REHEARING.

FIRST GROUND OF ERROR.

It will be observed by reading the contract between the Smith Bridge Company and the Railroad Company that the bridges were to be treated as personal property, until they were fully paid for.

The contract provides:

"During the construction of said bridge, and until the contract price shall have been fully paid, the said bridge and bridge material shall be and remain in the party of the first part, as their individual property, and in default of payment of the contract price of said bridge, the party of the first part reserves the right to remove said bridge and bridge material." (Record, p. 816.)

We claim that, so far as the bridges and bridge material are concerned, they remained personal property until the contract was completed by payment.

It is a well established doctrine in the different States, that such contracts are valid and binding as between vendor and vendee, and all subsequent purchasers of the property with knowledge or notice of such contract.

Wells vs. Bannister, 4 Mass., 415.
Doty vs. Gorham, 5 Pick., 487.
Osgood vs. Howard, 5 Greenl., 452.
Leland vs. Gasset, 17 Vt., 408.
Mott vs. Palmer, 1 Com. (N. Y.) 564.

In the case of Hunt vs. Bay State Iron Company, 97 Mass., 297, the Court say:

"When rails are delivered under an agreement that they shall be laid on a specific part of the railroad and continue the property of the vendor until paid for, they remain the personal property of the vendor until payment."

The evidence (Record p. 823.) shows that the Bridge Company has never consented to any delivery of the bridges or bridge material to the Railroad Company, but on the contrary expressly forbade the Railroad Company from taking possession of or in any manner using the bridges.

There is not a sylable of testimony in the record which tends to show that the Bridge Company ever in any manner consented to a delivery of their bridges to the Railway Company, or that they should be occupied and used, but on the contrary the record clearly shows that the Bridge Company was active in asserting its rights and alert in notifying all persons interested.

The mere fact that the Railroad Company has, since the completion of the bridges, used the same without fulfilling their contract, and against the will of the Bridge Company, should not by a Court of Equity be construed as a waiver by the Bridge Company, of any rights which it had under the contract.

The appellant's mortgage became a lien upon after acquired property, only as the same came into the rightful and legal possession of the Railroad Company. But in the case of these bridges, the undisputed testimony clearly shows that the Railroad Company never acquired any title to said bridges, nor any rightful possession thereof. Surely a Court of Equity will not go so far as to say that a railroad company may acquire property after the record of the mortgage, by theft or fraud, or other dishonest means, and turn the same over to the benefit of the bondholders.

It is true that these bridges were built on the line of the Railroad Company; they were built on the exact place provided by the contract, but it does not follow that they thereby became a part of the railroad, for the reason, as we have already shown, the contract provided that they should remain personal property; and the unquestioned testimony shows that the appellant, when he purchased said bonds, (as we shall hereafter show,) had full knowledge and notice of the terms of said contract.

It may be true that the Bridge Company would have no right to remove said bridges and bridge material from the place where they stand, and thus sever the railroad and destroy it as a public highway. The Bridge Company would have such right, undoubtedly, as between it and the Railroad Company, and purchasers with notice of the contract; but railroad companies being *quasi* public corporations, the public have an interest in them, and may demand that the bridges shall remain there for the use of the public, and that the railroad be kept in an operating condition.

The Supreme Court of Ohio, in Dayton, Xenia and Belfry Ry. Co. vs. Lewton, 20 O. S., 410, have held in a case very analogous to this, that the road should be kept intact, and that upon a sale of the road under a decree of the Court the priority of the lien will be protected, and the amount paid out of the proceeds of the sale of the entire road.

We, therefore, claim that these bridges being personal property, because the contracts preserved them as such, the language of this Court in Fosdick vs. Schall, 9 Otto, 235, applies with peculiar force. The Court there say:

"But as to that class of property, (after acquired,) it is well settled that the lien (mortgage) attaches subject to all the conditions with which it is incumbered when it comes into the hands of the mortgagor. The mortgagees take just such an interest in the property as the mortgagor acquired; no more, no less."

It is true that the property in dispute in that case was personal, to-wit: cars; but so were the bridges personal property in the present case, and for that reason are within the principle of the decision in the above case.

SECOND GROUND OF ERROR.

The fact that appellant, Porter, before he purchased the bonds of the Chicago and Great Southern Railroad Company, had full knowledge of the equities of the Smith Bridge Company growing out of their contract is not denied.

On the 5th day of December, 1884, the attorney for the Smith Bridge Company wrote appellant, Porter, a letter, setting forth the character of the claim and enclosing a copy of the contract. On the 9th of December, 1884, appellant, Porter, acknowledged the receipt of said letter, and also a copy of the contract. (See Record, pages 925 and 926.)

It is also undisputed that the First National Bank of Chicago as early as December 4th, 1884, had full knowledge of the equities of the Bridge Company and of the character of their contract, under which the bridges were built; and that said bank on said date was furnished with a copy of said contract. (See Record, pages 812, 813 and 814.)

This notice to appellant, Porter, and the First National Bank was given at least twenty (20) days before appellant and said bank acquired any interest in said bonds. It appears by the contract made by appellant for the purchase of said bonds, that he did not become the purchaser and holder thereof until on or after the 26th day of December, 1884; and that the same were not paid for until January, 1885.

It is true that on June 25th, 1884, appellant entered into a contract with Drexel, Morgan and Company, whereby he agreed to take up their claim against Crawford and the bonds, providing Crawford did not do so within a fixed time. (See Record, page 907.)

We submit, however, that appellant did not become the purchaser of said bonds under and by virtue of that contract. If that agreement had been carried out he would not have been the purchaser of the bonds, but simply an assignee of the debt of Drexel, Morgan and Company against Crawford, and by virtue of that would have held the bonds as collateral security only. But that agreement was never carried out, and it is not claimed that it was; but instead thereof, Porter, desiring to become the absolute purchaser and owner of the bonds, entered into the agreement of the 26th day of December, 1884, whereby he purchased from Crawford the bonds in question, and agreed to pay the sum of five hundred thousand dollars ($500,000) therefor. The said purchase price to be applied:—

First.—In the payment of the debt of Crawford to Drexel, Morgan and Company, and

Second.—To pay and clear off certain other claims against the Chicago and Great Southern Railroad Company. (See Record, page 912.)

In this syndicate contract, so-called, of the 26th of December, 1884, whereby appellant purchased said bonds, no reference whatever is made to any previous agreement on his part to take up the debt held by Drexel, Morgan and Company against Crawford. And we submit that the record clearly shows that appellant did not become the purchaser of said bonds until on or after the 26th day of December, 1884. and until long after he had full knowledge of the contract and claims of the Smith Bridge Company.

In the case of Pierce vs. Emery, 32 N. H., 521, the Supreme Court of New Hampshire in construing a contract similar to tho one in question, say:

"The bargain that the Railroad Company might take the iron and lay it in the track, and the complainants have a right to take it up and remove it, if the money advanced was not repaid within a time limited, though it would create no lien on the iron, as against those persons who did not receive notice, would be a good and binding contract between the parties, and if the trustees had notice of the agreement, we are of the opinion that it would bind them and the bondholders."

In the case of Haven vs. Emery, 33 N. H., 68, the Court say in construing a contract like the one in question:

"We see nothing in the way the rails are annexed to the road or in the manner in which they are used upon it, that incorporates them more essentially with the road, than in the case of a house or fence set on the land of another, and under an agreement that the house or fence shall remain the personal property of the original owner. And the house built on the land of another, or a fence set on his land, under an agreement that the house or fence shall remain the personal property of the party who placed it on the land, does not become annexed in law to the land. The agreement of the parties in such case supercedes the rule of the law."

And on page 69, the Court further say:

"Primarily in the absence of notice to the contrary, the purchaser would seem to have a right to suppose that he was buying with all the incidents which the law as a general rule annexed to his property. And we should hesitate before we held that he could be affected by an agreement not brought to his knowledge, which changed the natural and legal character of the property; *but if the purchaser buy with notice of the agreement and of the parties rights under it, he will be bound by it.*"

Also in the case of Hunt vs. Bay State Iron Company, 97 Mass., 279, the Court say:

"There can be no doubt that the rails when laid upon the roadbed and fastened there so that engines and cars could pass over them, would have become annexed to the reality and cease to be personal property, in the absence of an agreement changing the ordinary law. Where rails are delivered under an agreement that they should be laid down on a specific part of the railroad, and continue the property of the vendors until a specified price was paid for them, they remain the personal property of the vendors until payment, and are not when laid so inseparably annexed to the reality, that they cannot be removed for non-payment of price. The agreement of the parties supercedes the general rule of law, and is binding likewise upon subsequent mortgagees with notice."

The Court further decide that the case must be sent to a master to ascertain the facts as to whether the mortgagee and the holder of the bonds had notice before purchasing the same, and if they had such notice, such agreement will be enforced This opinion was concurred in by all the members of that eminent Court, among whom was his Honor, Justice Gray.

It will be seen by the foregoing authorities that the only question to be determined in regard to the Smith Bridge Company in this case is whether or not appellant, Porter, had notice of the contract and equities of the Bridge Company at the time he purchased the mortgage and the bonds. If he had such notice, then he took said bonds subject to the prior equity of the Bridge Company's claim, and that he had such notice with the fullest knowledge of the equities of the Bridge Company is not disputed.

The case of the Galveston Railroad vs. Cowdrey, 11 Wallace, 480, upon which counsel for appellant relies, we submit is not an authority against the claim of the Bridge Company, for the reasons:

First.—That the contract of Pulsford was not like the contract of the Bridge Company in this case, and

Second.—There was no evidence in that case to show that the holders of the bonds had any notice or knowledge, whatever, of the claim of Pulsford; and the Court distinctly found that the holders of said bonds were innocent purchasers thereof, and without knowledge of Pulsford's contract. And the same might be said as to all authorities cited on behalf of appellant against the claim of the Bridge Company, no one of which is in point; and so far as we know, all the decisions, both State and Federal, sustain and enforce contracts, like that of the Bridge Company in this case, as between the parties, and as to all purchasers with notice.

It will be observed (Record p. 864,) that the bonds in this case were first turned over to Crawford to be used by him for certain specific purposes. He then pledged said bonds to Drexel, Morgan and Company. They were never issued or sold to Drexel, Morgan and Company. Crawford afterwards upon entering into the so-called syndicate contract, became again the absolute owner of the bonds, and they were then, for the first time, issued to appellant, Porter He was in fact the first and only purchaser of any and all the bonds of The Chicago and Great Southern Railroad Company, and, as we have said, became such purchaser with full knowledge of the equity of the Bridge Company.

THIRD GROUND OF ERROR.

We claim further that the syndicate contract, so-called, by which the appellant became the purchaser and owner of the bonds, shows not only that the appellant had full knowledge of the contract of the Smith Bridge Company, but that it also provides for the payment of the lien and claim of the Bridge Company against said railroad

Article 2, Section 3, of said syndicate contract provides: (See Record, pp. 912 and 913.)

"The syndicate hereby agrees to pay and clear off any and all claims against said Chicago and Great Southern Railroad Company, which may be decided by the court to be liens upon the said line of railway paramount to the liens of the bonds and coupons secured by the Trust Deed to said John C. New, dated November first, 1881, which the court may decide shall be equitable payable out of the proceeds of the sale of said line of railway, prior to any payment of said bonds or coupons, including therein * * * bridges and other structures heretofore built and put in place on said railroad, and essential to the operation thereof, the title of which is not in said railroad company, and which the court may decide must be paid for in preference to said bonds."

As we have before said, this clearly shows that before appellant purchased said bonds he had the fullest knowledge of the equities of the Bridge Company; and we claim further, that the appellant bound himself by this provision expressly to pay this claim, and thereby obtain the title to the bridges which the company had not yet obtained; but it is claimed that this provision was only binding upon the appellant, when the Court should by decree declare the claim of the Bridge Company to be prior to that of the bonds.

In answer to this we say that the language above quoted plainly shows that the parties had in mind the judgment of the Court wherein the foreclosure suit was instituted, and the words "the Court" did not embrace the Court of last resort, and we, therefore, claim that the Circuit Court having decided that the claim of the Bridge Company was prior and superior to that of the bonds, that this provision of the syndicate contract thereupon became operative and conclusive against the appellant and in favor of the Bridge Company.

It is a well settled doctrine, that contracts of this nature are to be most strongly construed against the purchaser, and in favor of the parties whose claims the purchaser has assumed and agreed to pay as part consideration for the purchase of the property.

FOURTH GROUND OF ERROR.

In holding that the Smith Bridge Company, at the time they received from Crawford part payments during the construction of said bridges, knew that said money received by them from said Crawford was the same money which had been advanced by Drexel, Morgan and Company on the faith of the bonds pledged to them, we think that this Court overlooked the testimony in the record.

On pages 651 and 652 of the Record, Mr. Crawford is asked the question by appellant's counsel about what information he had given to the contractors and creditors, in regard to the pledge of these bonds to Drexel, Morgan and Company, and the money which he had received thereon.

In answer to this, Crawford says:

> "I told the Smith Bridge Company, whose General Manager was in New York at that time dunning me vigorously for a payment that I would like to have paid him, and he personally knew of the negotiations with Drexel, Morgan and Company, and that they were loaning upon the bonds, and just exactly what was going to be done with the money."

Crawford does not say that he informed the manager of the Bridge Company of the fact, nor does he tell how such manager knew it.

This is all the testimony produced by the appellant tending to show that the Smith Bridge Company knew any thing about the pledge of the bonds to Drexel, Morgan and Company, and that Crawford had received any money from them. On the contrary, R. W. Smith, President and Manager of the Smith Bridge Company, (Record p. 811,) testified as follows:

> "*Q.* What, if anything, did he (Crawford) state to you about the means of getting payment, his means of getting money to make payment with? *A.* We had a good deal of talk at different times about raising funds, and he said they would have funds in short time to complete payments.

Q. Did he state where he was going to get his money? *A* I don't know that he did, and do not know that he did not. He did a good deal of talking, and made a good many promises."

The foregoing is all the testimony upon this point. And we submit that there is nothing in this testimony which shows that the Smith Bridge Company were informed at the time they were receiving payments from Crawford on these purchases, that this money was the proceeds of the bonds pledged to Drexel, Morgan and Company. The burden on this question rests with the appellant. But we deem it entirely immaterial whether the Smith Bridge Company knew that they were receiving money, which Drexel, Morgan and Company paid to Crawford, or whether they did not.

Their contract provided that they should retain the bridges until payment was made in full. The contract being conditional, it cannot be successfully claimed that the Smith Bridge Company in any manner waived their rights under that contract by receiving the payments as stipulated. Drexel, Morgan and Company had no claim upon the bridges. Crawford was endeavoring to pay the Smith Bridge Company, in order that he might obtain title to the bridges, thereby making the Railroad and the securities held by Drexel, Morgan and Company more valuable. It would be a strange doctrine to hold that the Smith Bridge Company in receiving the money from Drexel, Morgan and Company, or from any other source, in fulfillment of the express terms of their contract, thereby waived their rights under and by virtue of those contracts.

It is of no consequence that the Bridge Company took Crawford's personal obligation endorsed on the original contract, whereby he guaranteed its due performance; nor that Crawford's check was accepted with the condition that if paid the check was to be in full payment of the contracts. The check was not paid.

In Clarkson vs. Stevens, 16 Otto, 505, this Court holds that neither the making of payments as the work advances, nor the acceptance of collateral security, will have the effect to pass the title to the property.

And we, therefore, submit that for any and all the foregoing reasons the decree of this Court, as already announced, holding that the bonds in the hands of the appellant are superior to the lien and claim of the Smith Bridge Company, is erroneous, and this petition for rehearing should be granted in so far as the claim of the Smith Bridge Company is concerned. Respectfully submitted.

THE SMITH BRIDGE COMPANY.
By E. W. TOLERTON, *Its Attorney.*

120-649

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1886.

No. 1280.

HENRY H. PORTER,
Appellant.
vs.
THE PITTSBURGH BESSEMER STEEL COMPANY, (Limited); THE CLEVELAND ROLLING MILL COMPANY; THE SMITH BRIDGE COMPANY; CRERAR, ADAMS & COMPANY, and VOLNEY Q. IRWIN,
Appellees.

Five several Appeals from the Circuit Court of the United States, for the District of Indiana.

Brief for Rehearing on Behalf of Appellees.

J. S. COOPER,
A. C. HARRIS,
Of Counsel,

W. H. CALKINS,
Solicitor for Petitioners.

Hasselman-Journal Co. Print, Indianapolis.

In the Supreme Court of the United States.

APPEAL FROM U. S. CIRCUIT COURT,

DISTRICT OF INDIANA.

HENRY H. PORTER, *Appellant.* *vs.* THE PITTSBURGH BRESSMER STEEL COMPANY, (Limited); THE CLEVELAND ROLLING MILL COMPANY; THE SMITH BRIDGE COMPANY; CRERAR, ADAMS & COMPANY, and VOLNNEY Q. IRWIN, *Appellees.*	*Five several appeals from the Circuit Court of the U. S., for the District of Indiana.*

BRIEF FOR REHEARING ON BEHALF OF APPELLEES.

FACTS ERRONEOUSLY STATED.

I.

This Court, in its opinion, makes the following statement:

From January 5th, 1883, to September, 1883, the contractors and subcontractors, furnishers of material and laborers, were informed and understood that the money paid to them from time to time during that period was mainly derived from a loan negotiated upon the mortgage bonds of the railway company. Each of these five appellees knew of the pledge of these bonds to Drexel, Morgan & Co. for this loan, and knew that they were getting part of the borrowed money loaned by Drexel, Morgan & Co.

To this statement of facts we object as entirely erroneous, and not borne out by the evidence. This, we may be permitted to say, is a

quotation almost literal from Mr. Butler's brief, and the only reference he made to support this statement was to pp. 651–2, and 3 of the Record. We desire to here present to the Court all the evidence on that subject: On page 651 of the Record, in answer to a question as to what information was given out along the line of the road to contractors, creditors and others, in regard to the pledge of these bonds to Drexel, Morgan & Co., and the receiving of money from that source, Mr. Crawford answered:

> I was down along the line of the road very seldom; I rarely went down except about the time that money was being paid out on the road, towards the middle of the months; as far as I ever saw, or had any conversation with the creditors, they knew about the matter exactly as much as I knew.

Now mark that Mr. Crawford carefully guards this testimony with the remark that

> As far as I ever saw or had any conversation with the creditors, they knew, etc.

This certainly does not prove that he had conversed with all the laborers, furnishers of material, nor anyone else, except so far as as he afterwards specifies.

> Towards the last of 1882 there began to be arrearages on labor and material accounts. I had not any collateral out of that Chicago & Great Southern matter to get any money on, and all the money that I put in—why, I was putting in out of my own pocket-book; and, if you gentlemen remember the last part of 1882, and all that period, it was probably as black times for new railroad enterprises as this country has ever seen or ever will see, and debts began to accumulate, and I told Mr. Chisholm personally—
>
> Q. Who is Mr. Chisholm?
>
> A. He is the president of the Cleveland Rolling Mill Company. I told Mr. Irwin personally; I told Mr. Christie, of Mueller & Christie; I told Mr. McDonald, the man who was driving piles down there; I told Mr. McCalmont, and a half dozen other creditors that I personally remember, that I was personally negotiating with Drexel, Morgan & Co. to loan $400,000 on the pledge of the stocks and bonds of the company to clear up past-due debts and to go on with the work.

Now, this Court will see that in this list Mr. Crawford names two persons who are appellees here, whom he personally told that he was negotiating with Drexel, Morgan & Co. for a loan on the pledge of the stock and bonds of the company. These two persons were the Cleveland Rolling Mill Company and Mr. Irwin; the other persons that he names in this conversation are not parties, and, therefore, as to these appellees, the testimony amounts to nothing.

Mr. Crawford then continues:

> Q. How about the Smith Bridge Company?
>
> A. And the Smith Bridge Company. Right in that connection, I desire to state that while I was making this negotiation with Drexel, Morgan & Co., which probably occupied in all over a month, I saw Mr. William Chisholm, the President of the Cleveland Rolling Mill Co., in Drexel, Morgan & Co's office, in New York, and I told him just exactly what my business there was, and the full and precise nature of it. Later, he got, at my earnest solicitation, twenty-two thousand odd hundred dollars out of this very Drexel, Morgan & Co. loan in a check drawn by me on that house * * * * * in payment of part of this rail account that had been incurred in the fall of 1881. I told the Smith Bridge Company, whose general manager was also in New York at that time dunning me vigorously for a payment that I would like to have paid him, and he personally knew of the negotiation with Drexel, Morgan & Co., and that they were loaning upon the bonds, and just exactly what was going to be done with the money; one of the very first men that was paid out of the Drexel, Morgan & Co. money was the firm of Mueller & Christie, for ties furnished and shipped down to Fair Oaks in the latter part of 1882.

Mr. Crawford, continuing further, at the bottom of page 652, says:

> Mr. Irwin knew the same thing and so did Mr. McCalmont, because I had been dunned by them for past-due grading account, and the situation was explained exactly and precisely and truthfully to them, and as soon as the first money came, why, they got their acquittance in the same way.

And now comes the last statement which has any materiality upon the question, as follows:

> Q. I will ask you to state, Mr. Crawford, what concealment you ever made to anybody in regard to the status of the stock and bonds of the Chicago & Great Southern Railway Company?
>
> A. Never anybody on earth; every creditor of that concern I told the situation frankly to—that is, that the bonds and stock were never, after I began to take any active management of the concern, not a dollar of stock or a dollar of bonds was ever under my control or in my possession, not a dollar.

Now, when analyzed, this evidence may be stated as follows: That Mr. Crawford told Mr. Chisholm, of the Cleveland Rolling

Mill Company, of his efforts to pledge stock and bonds to Drexel, Morgan & Co., and that afterwards Mr. Chisholm got a part of the money thus raised; that he told Mr. Irwin, one of the appellees, the same thing. That he told the agent of the Smith Bridge Company the same thing. As to the Bessemer Steel Company and Crearer, Adams & Co., there is no specific allegation by Mr. Crawford in this testimony that he told them anything about his negotiations with Drexel, Morgan & Co. So that, if this evidence stood alone, the only persons that would be charged with notice would be the Smith Bridge Company, the Cleveland Rolling Mill Company, and Mr. Irwin.

Right at this point we cite the Court to the Record wherein Mr. Chisholm denies that he knew anything specifically in relation to what Mr. Crawford was doing except only he was trying to negotiate the bonds of the Chicago & Great Southern Railway. In fact, it is a substantial denial of Mr. Crawford's testimony. Mr. Chisholm's testimony is set out on page 100 of our original brief, and at pages 799 and 800 of the record in this cause. When Mr. Chisholm was upon the witness stand, Mr. Crawford's testimony was recited to him, and he was asked whether he had had the interview and conversation testified to by Mr. Crawford, and his answer was, and is, "No, sir." Therefore, unless this court is prepared to believe Mr. Crawford, who has the affirmative, and must sustain his issue by a preponderance of evidence, the fact is not proven that the Cleveland Rolling Mill Company had the notice which Mr. Crawford testifies to.

Next, as to the Smith Bridge Company. Robert W. Smith, who was the general agent of the company, testifies at page 811, *et seq.* of the Record, as follows:

> We, (Crawford and myself) had a good deal of talk at different times about raising funds, and he said they would have funds in a short time to complete the payments.
>
> Q. Did he state where he was going to get his money?
>
> A. I do not know that he did, and I do not know that he did not; he did a good deal of talking and made a good many promises.

This, we admit, is not a specific denial of the testimony of Mr. Crawford, but is, in a general way, a denial of the specific knowledge which Mr. Crawford says he imparted to him. It certainly is entitled to as much weight as Mr. Crawford's general statements are, and therefore we assume, counterbalances any specific knowledge which Mr. Crawford says he gave to him with reference to the negotiations and sale of the stock and bonds to Drexel, Morgan & Co.

As to the Bessemer Steel Company, and as to Crearer, Adams & Co., there is no specific statement, by Mr. Crawford, that he ever imparted any knowledge to them. At least, if there is, we do not recollect it, and Mr. Butler in his argument has not pointed it out to this Court.

So that on the evidence the case stands, as to Mr. Irwin, one of the appellees, that he had knowledge of the facts testified to by Mr. Crawford. As to the other four appellees, we may safely say there is no evidence which preponderates in favor of the fact which this Court recites as true; and, as to two of the appellees, no evidence that such fact exists. As to Mr. Irwin, his lien for grading stands upon a different basis, from the claims of the other appellees, and in our view his knowledge, or want of knowledge, makes no difference so far as his claim is concerned.

As to the statement that all the laborers and material-men were informed and understood that the money being paid to them from time to time was made from the Drexel, Morgan & Co. loan, we submit that it rests entirely upon Mr. Crawford's general statement that he told all of them "whom he talked to," and that he went down along the line of the road "very seldom." Weighing this testimony from the stand-point of human knowledge, it will require a great stretch to say that Mr. Crawford spoke to every man, from the boy who carried the tin pail at twenty-five cents a day, to the contractor who furnished thousands of tons of steel rails to this corporation, and told each and all of them the condition of the company's affairs. To make such a finding upon the statement of Mr. Crawford, would be contrary to human experience, and beyond the scope of what Mr. Crawford intended to say, or did say, in his evidence.

II.

THE FOSTER BOARD OF DIRECTORS.

Another mistake which this court makes is as follows:

In its opinion the court says

> That this board (the Foster Board) was not dominated or controlled by Crawford is shown by the fact that when, on February 7th, 1882, eleven

days after Crawford had delivered to Dull & McCormack the $1,000,000 bonds, Crawford asked the board to enter into a construction contract with him, and sent them a draft of the contract which he desired, the board unanimously rejected it.

We respectfully submit that a most serious error which this court has fallen into, is, that the Foster Board was not controlled by Crawford. We will prove it by the Record.

1. Crawford's contract of June 23, 1881, with the Foster Board contained a clause that the Foster Board should resign whenever Crawford should request them to do so. Record, page 859.

2. The railroad had issued $50,250 par value of stock, which, together with $10,000 par value of stock held by Foster, was all the stock of the Foster Road. Mr. Crawford, by his contract of June 23, 1881, purchased the $50,250 of that stock. At the time he believed it to be all the legal stock of that road. For he says in his testimony that he regarded the stock held by Foster as a gratuity, having been issued without consideration, and, therefore, of no value. (Record, page 668.) This being so, his ownership of the $50,250 of the stock was an absolute ownership of the road.

3. On being asked, as a witness, whether he had any particular arrangement with the railroad or its directors after June 23d, 1881, up to the time that he had requested the Foster Board to approve his construction contract, Mr. Crawford answers:

> I do not know what you call a particular arrangement. I went on and furnished the money—at first, simply because I was acting under the impression that *I practically owned that piece of property*, and while I was not formally in control of it, yet that whenever I desired to control it, that the control was obtainable. (Record, p. 638.)

4. In his testimony, Mr. Crawford says, that he had put at least $400,000 of his own money into this railroad before his construction contract was tendered to the Foster Board. This was done without any contract, but on the theory, as Mr. Crawford says, that he "practically owned that piece of property."

5. Mr. Little, one of the Foster Board, says that from June 23d, 1881, down to the 15th of March, 1882, (that being the time the Foster Board resigned,) all the business of every kind was transacted by the board at the dictation and request of Mr Crawford, including the execution of the mortgage and bonds. (Record, p. 374.)

We claim that this testimony, which is undisputed, and is largely Mr. Crawford's own statements, conclusively shows that he was not the "*dominant stockholder*" but the *sole owner of this railroad.* That he controlled the board of directors is undisputed, except in the single instance of the rejection of his construction contract.

This court makes that single fact the controlling one in its opinion that Crawford did not dominate and control the Foster Board, whereas, that fact properly weighed, proves conclusively Crawford's control and domination. For, up to that time, he had had his way about every thing. This Mr. Crawford admits, for he says that its control was obtainable at any time he desired it. What he means by this evidently is, that at any time when he should say to the Foster Board to resign, their resignations would be forthcoming, as provided in his contract. Mr. Crawford explains the rejection of his construction contract by the board of directors in such a way that it ought to put the matter at rest. He says, in substance, that Mr. Foster had gotten the board of directors to pay him the $10,000 of stock for his services; that he regarded that as a gratuity and of no value; but he says that he was compelled to purchase that $10,000 of stock. How was he compelled to purchase it? He explained it in this way: that when Mr. Foster had come to the conclusion to squeeze him out of $10,000, he got the board of directors, who had no interest whatever in the railroad any longer, to enter into a conspiracy with him, and Mr. Crawford could not get a board meeting and therefore could not call upon them to resign. Now, in this situation of affairs, Mr. Crawford was compelled to do one of two things—either go into a court and enforce his contract or submit to being bled by the purchase of Mr. Foster's stock. He chose the latter course. We suppose he did so as a business transaction, thinking it cheaper to buy the stock rather than to enforce his contract through the courts. At least, that is the fair inference. The moment that he negotiated with Mr. Foster for his stock, that moment the Board came together, and on the order of Mr. Crawford each one of them tendered his resignation, which was promptly accepted at Mr. Crawford's command, and one by one he substituted his automatons for the Foster Board. He was determined to make no mistake in this last Board for he chose his confidential clerks and relatives and assigned to each of them a share of stock and then kept the stock himself.

Now, under this state of facts, to say and find that Mr. Crawford did not dominate and control the Foster Board of Directors, it seems to us, is to find a fact in the face of the evidence.

If this Court will consider it a moment, it will agree that no sane man would put nearly a half million of dollars into an enterprise without a contract or a word with its directors unless he thought he had control of them. Nor would it be considered for a moment that Crawford was acting simply as the dominant stockholder, when he himself says that he considered all the other shares of stock illegal and valueless.

On this question we urgently ask the Court to reconsider its opinion and find the fact to be—which we contend is the truth of the matter—that Mr. Crawford was as much the owner of the Foster Railroad as he was of the "clothes he was in" when he was testifying.

III.

Mr. Crawford had entire control of the board of directors succeeding the Foster Board. This the evidence conclusively shows. They never did an act, or attempted to do one, unless it was at Mr. Crawford's suggestion or command. This board was a device merely to further Mr. Crawford's ends, and he made use of it to control the railroad in a corporate name instead of using his own name. If it had been land, or any other property, it could not have been dominated and controlled more exclusively and entirely without the intervention of a board of directors, than it was through this board. To reduce the matter to its lowest terms, Mr. Crawford managed and controlled this railroad property through the device of a board of directors just the same as he would control any other property which he owned.

IV.

We respectfully submit that the statement of facts, in the opinion of this Court, ought to be further corrected so as to show the fact that Mr. Crawford, after June 23 down to the time when the receiver took possession of the road in the State Court, controlled the action of the two boards of directors in everything which they did, with the single exception of the rejection of his construction contract by the Foster Board. This is the only instance in which either board ever disobeyed his commands or refused to act upon his suggestions. If there is a single instance where such is not the case we do not now remember it, and we think we are pretty familiar with the Record. Mr. Crawford caused the creditors' suit to be commenced in the State Court, and had Mr. Shumway appointed its receiver. He caused himself to be made a party to that suit, and then filed his disclaimer and caused judgment to be rendered thereon in his favor. Mr. Crawford himself, when testifying, says all the way through his testimony that he owned this railroad; and, to use his own expressions, he said he considered himself "a corporation sole;" that he owned it as much as if it had been "a horse and buggy," or the "clothes that he had on."

V.

We respectfully submit that the statement of facts in the opinion of this Court should be further corrected so that the fact should appear that the two contracts made between Drexel, Morgan & Co. and Nickerson & Porter, and between Drexel, Morgan & Co. and Crawford, were made with his (Crawford's) full knowledge and consent, and for his benefit; that the purpose for which they were made was to give to Crawford a chance to dispose of the bonds and stock to other parties, or make such a disposition of them as would enable him not only to pay off the Drexel, Morgan & Co., and First National Bank debts, but save something for himself. For it must not be forgotten that at this time the First National Bank of Chicago held collateral security for the debt Crawford owed it of the value of $116,000, or more than one-third of his entire indebtedness to it.

VI.

We respectfully submit the statement of facts in the opinion of the Court should be further corrected so as to show that when Mr. Crawford finally gave up in despair, and had no longer any hope of working through and saving himself, that then, and not till then, was the syndicate contract agreed upon, and all prior engagements, contracts, and everything else that had taken place between them was wiped out; and, as Mr. Nickerson calls it in his testimony, a "new deal" was entered into, by which the syndicate, to buy the new stock and bonds of the wrecked railroad, was formed, and Porter given the entire control and management of bringing the new creature up out of the wreck of the old. By the terms of this "new deal" Mr. Crawford's interest was valued at about $350,000. He was to, and did, assign it to the First National Bank of Chicago, and the bank in turn surrendered $116,000 in value of other stocks and bonds which it held as collateral, to Mr. Crawford.

VII.

We respectfully submit that the finding of facts of this Court should also be made to show that Mr. Crawford, without authority of law, on the 26th day of January, 1884, as president of the company, had issued to himself $1,200,000 of stock, par value, in this railroad. That on the 14th day of February, 1884, he caused his board of directors, by resolution, to authorize such issue And that on May 5th, 1884, while he himself was presiding as president of this corporation caused another resolution to be passed by his board of directors, (found on page 40 of our original brief) ratifying the issue. Drexel, Morgan & Co. knew of the illegal issue of this stock, and Porter, when he took said stock, knew of its illegal issue and all the facts and circumstances attending it. That so knowing Mr. Porter voted this very stock at the last meeting of the stockholders of the said railroad company before it finally became extinct by reason of this foreclosure proceeding.

VIII.

Dull & McCormack, Drexell, Morgan & Co., H. H. Porter, and the First National Bank of Chicago, before they or either of them took any of these bonds, or parted with anything of value thereon, knew that Mr. Crawford was the sole owner of this railroad. They and each of them knew that he was the sole stockholder, and dominated and controlled the road. He covenanted in his contract that such was the case. The records of the corporation showed that such was the fact. Mr. Crawford always stated to these men that such was the fact. Each one of them, before investing any money on the faith of the bonds, not only investigated the matters personally, but caused the record books, contracts, acts of consolidation, and everything else connected with the concern, to be submitted to their attorneys, who also carefully went through them; thereby each of these persons acquired full notice and knowledge of all and singular the transactions hereinbefore recited.

IX.

The short facts of this case are, that Mr. Crawford, on June 23, 1881, bought two railroads and consolidated them. He used a board of directors in the management of this property as a mere device. This practice is denounced by the Supreme Court of our State as a fraud upon the law. *Pullman* v. *State*, 105 Ind. 568; *Coffin* v. *Ransdell*, published in the Railway and Corporation Law Journal, April 2, 1887, p. 326.

As soon as he had purchased these railroads without any contract or understanding with the board of directors, he commenced completing the unfinished part of his property. For that purpose he entered into contracts in the name of the railroad with appellees for work and material to be used in the completion of the road. He put in of his own means, according to his own statement, nearly a half million of dollars without a contract with the board of directors of the railroad, and went on with the business just as any man would in controlling his own property. In December, 1881, he asked the Foster Board to endorse a construction contract which he sent them. Mr. Foster caused the contract to be rejected, and refused to call the board together until March 15, 18·2, when, as before recited, Mr. Crawford found it to his advantage to have the Foster Board resign and his own clerks and relatives appointed in their stead. This Board, as has been before remarked, was under the complete control of Mr. Crawford, and bowed obediently to all of his behests.

October 29, 1881, Crawford caused the board of directors to authorize the making of the mortgage in controversy, and to appoint John C. New (whom he selected himself) as trustee. That is to say, Mr. Crawford being the sole owner of the railroad, caused his own property to be mortgaged and appointed Mr. New his trustee to act for him, as named and mentioned in the trust. It is true that Mr. Foster made a written memorandum respecting the purposes for which the bonds were issued. This, however, never seems to have been considered as of any binding force or effect, for Mr. Crawford disregarded its terms from the beginning. The fact is, the bonds were signed and delivered to Mr. Crawford without any very definite understanding, and according to his theory, none was needed, for he was the sole owner of them whether their value was much or little, or whether they were legally issued or not. He used the first

$1,000,000 of them as a collateral for a past-due note to secure an extension of time. He used the whole of them with the stock of the concern as collateral to his note to Drexel, Morgan & Co. On the 18th of March, 1882, as a mere device, he caused his own board of directors to make a construction contract with himself, to more effectually cloak the transaction and give it an appearance of legality. By this construction contract he absorbed the entire credit and avails of the railroad. These devices were the masks and cloaks under and through which he did the business. But looking through these insubstantial acts, it was Henry Crawford mortgaging his own property to a trustee for his own benefit. It is true, Mr. Butler gives, with scrupulous exactness, the dates of all these transactions, and recites them with the stately dignity of *bona fide* transactions. This Court seems to have adopted that theory without looking behind these masks and cloaks to see the real transaction. Of this we complain. In the commission of any acts which are fraudulent, where muniments of title are required to be preserved in writing, it is usual, nay, almost universal, that the forms of law are strictly complied with. But courts of equity look through these forms to the substance, and when the evidence lays bare the whole transaction, will treat the whole subject as it is, and not what it is made to appear by the use of deceptive agencies.

ARGUMENT.

We will not here repeat our former argument, but simply re-state the rational conclusions drawn from the facts as we claim them to be, and ask the Court to re-consider the rules applicable to the facts as we view them.

1. It is claimed the bonds were delivered to Mr. Crawford as contractor, to secure him for advances already made, and for future advances to be made to the railroad. Our answer to this is, that it assumes that the railroad was, in fact and in law, a separate person from Henry Crawford. This we deny. It may have been, so far as innocent dealers with it were concerned, but as to Henry Crawford, who was its soul, body and spirit, it was not a separate and distinct entity. Its physical property belonged to him, and its corporate organization was but a cloak used by him to simulate a corporation.

Wardell v. *Railroad*, 103 U. S. 657.

2. The foregoing proposition being true, it follows that all the money advanced by Henry Crawford was for the betterment of his own property, and that he did not, in fact and in law, stand towards the road as a contractor, any more than a man can stand in that relation towards his own property when he is making the improvements upon it himself.

3. That under the circumstances before referred to, Mr. Crawford could not secure himself for past or future advances at the expense of creditors who had furnished and were furnishing their money, labor and materials to improve his property, by taking and holding its mortgage securities.

Jackson vs. *Lending* 21, Wall. 622.

4. It is claimed that Dull & McCormack, Drexel, Morgan & Co., and Henry H. Porter were innocent purchasers and holders of the mortgage securities for value. That Drexel, Morgan & Co. were subrogated to the rights of Dull & McCormack, and that Henry H. Porter was subrogated to the rights of both Drexel, Morgan & Co., and Dull & McCormack. Our answer to this is, that Dull & McCormack were not purchasers without notice for value at all. They were simply pledgees holding the mortgage bonds as collaterals for a past-due note, with full notice of Mr. Crawford's attitude and position and his relations with the railroad. That having such notice and being pledgees, they took no greater interest or rights in the mortgage bonds than Mr. Crawford himself had, and took them subject to all the equities which existed against Mr. Crawford. We claim the same is true with reference to Drexel, Morgan & Co. and Henry H. Porter. If there were superior equities existing in favor of any one, as against Mr. Crawford's title to those bonds, that equity exists equally as against Dull & McCormack, Drexel, Morgan & Co. and Henry H. Porter.

It follows, as we think, necessarily that Mr. Crawford could not take these mortgage bonds and cut off his own and the company's creditors; neither could either of the parties mentioned take them and claim to be protected as innocent purchasers. As a general rule pledgees are not innocent purchasers. But in this instance each one of them had notice that Mr. Crawford owned and controlled the railroad, and they are also bound to know that the board of directors was a mere sham, and its pretended corporate organization a mere device. Of course, as between Mr. Porter, Drexel, Morgan

& Co. and Mr. Crawford, another rule would apply, but as between these appellees who are innocent dealers with this railroad, no question of stoppel prevents them from asserting the truth.

Brandt on Suretyship and Guaranty, Sec. 226, pp. 359–60;
Fresh v. *Gilson* et al, 16 Peters, 327;
Colebrooke on Collateral Securities, p. 568;
Wickham v. *Morehouse*, 16 Fed. Rep. 324;
Judson v. *Corcarun*, 17 How. 612;
Cowdry v. *Vandenbrough*, 101 U. S. 572.

5. It is claimed that it does not lie in the mouths of these appellees to assert the invalidity of the corporate existence of the railroad. That if there was no legal board, then the contracts between such board and these appellees would be invalid. This suggestion, we submit, is not well considered. There may be a *de facto* board of directors, whose acts will be binding when dealing with strangers, but whose acts when dealing with a promoter and one of the active factors in the corporation, and who has knowledge of all the facts, would be entirely invalid. In other words, a corporation with a board of directors may be a *de facto* corporation as to all the world who deal with it as such, and yet when peculiar relations are sustained to it by any person, and such person has knowledge of the actual condition of affairs, such corporate acts may be wholly invalid. Suppose a case: I organize a fictitious corporation with a fictitious capital stock, and elect my employes and relatives a board of directors to manage the affairs of such fictitious corporation. I keep aloof from any official connection with the fictitious company. Strangers to the corporation deal with it in its corporate name without any knowledge of the actual condition of affairs. I attempt to defeat the creditor's claims by having mortgages and bonds issued to me in the regular way by this board of directors. Will it be contended that the same rule would apply to me in my dealings with the corporation as would apply to the creditors, who supposed it to be a real corporate body? This, we contend, is Mr. Crawford's exact position to this railroad. It was, in fact, a fictitious corporation. He owned it and controlled it. He had a real board of directors, so far as the outside world was concerned, but as to him, they sustained a very different relation, than they did to strangers.

Hence, when he undertook, through this board of directors, to secure to himself a paramount lien on his own property for advances made, and to be made, in making it valuable, such acts can not prevail over creditors who *bona fide* dealt with the corporation, supposing it to be actually what it purported to be.

Cook on Stock and Stockholders, Sec. 233;
Swift v. *Smith*, 102 U. S. 442. (See page 448.)
Railroad v. *Soutter*, 13 Wall. 522.

6. It has never been contended, and is not now contended, that the unsecured floating debts for construction are a lien on the railroad superior to the lien of a valid mortgage duly recorded and the bonds secured thereby. No one has ever contended in this case, so far as we know, for such a doctrine; and it is because this Court has not seen through the breast-works and embankments constructed by Mr. Crawford around this case, that this argument is put forth. Our contention is that whatever liens were created by the mortgage under the circumstances of this case, were postponed to the claims of the *bona fide* creditors of this corporation and Mr. Crawford; that this mortgage was a fraud upon their rights and could not be foreclosed as against them. This was the view taken by the Circuit Court, and while it felt compelled to enter a forclosure against the corporation, under its answer, admitting everything alleged in the bill, it refused to foreclose it as against these creditors, holding, in fact, that as to them it was fraudulent and void. This is the effect of the decree.

Taylor, Priv. Corp., Chap. 10;
Gillmore, etc., R. R. v. *Kelly*, 77 Ill. 426;
Post v. *Russell*, 36 Ind. 60.

7. Again: It is claimed that subsequent creditors can not be heard to impeach an executed contract where their dealings with the company of which they claim the benefit accrued after the contract became an executed one. We recognize this as a sound principle of law, but one wholly inapplicable to these appellees. It is admitted that the Cleveland Rolling Mill Company's claim accrued before the contract with Crawford became executed; it is omitted to be stated—but should have been—that the appellee Irwin's claim accrued before that time. As to those two appellees, this is a sufficient answer to that suggestion; and if these two appellees can object that the mortgage was fraudulent and void, it does not prevent subsequent creditors from being benefited by an adjudication to that effect.

Bump on Fraudulent Con., p. 324, 509.
Koehler v. *Black River, etc.*, 2 Black. 715;
Flint, etc., R. R. v. *Dunly*, 14 Mich. 477;
Minor v. *Bank*, 1 Peters, 71;
Thomas v. *Railroad*, 109 U. S. 524.

8. It is claimed that the delivery by Crawford of the bonds secured by mortgage made by himself on his railroad to a third person for a valuable consideration, made the mortgage a valid security, and made the bonds in the hands of innocent purchasers a valid lien on the railroad. That an owner of a railroad, though he may be indebted to those who aid in constructing it by furnishing materials, may well execute a mortgage on it which will be good against unsecured creditors; that, on the theory that Crawford was the owner of the railroad, no more than this was done in the case in hand. In answer to this suggestion, we may say that it is certainly true that a man may mortgage his own property to secure a part of his creditors to the exclusion of others. But that is not this case. Our contention is that Crawford was the owner of the bonds subject only to their pledge as collateral security for the payment of his note which he procured Porter and Nickerson to pay, and that his ownership of the bonds continued until the making of the syndicate agreement. That the effect of that agreement was to place Porter in the shoes of Crawford so far as these creditors were concerned, whom Crawford was bound to pay, and whom Mr. Porter became bound to pay by reason of the syndicate agreement. If these mortgage securities had been sold in the open market to innocent purchasers for value without notice, quite a different question would have been presented. That is not the case here. Hence the suggestion that is made can have no effect in the decision of this case. Henry Crawford, being bound himself to pay these claims as a condition of receiving the securities, and Mr. Porter having knowledge of that fact, it would be a fraud to now allow him to say, that he is protected by reason of being an innocent purchaser for value without notice. Besides, the syndicate agreement recognizes the claims of certain of the creditors, and a fund of $100,000 is set aside to pay them. (*Vide* contract.)

Cowdry v. *Vandenbrough*, 101 U. S. 522;
Simpson v. *Bank*, 9 Lea (Tenn.) 713.

9. Another view of this case is, that Mr. Crawford, being the sole proprietor of the corporation, he could acquire no greater rights over the property as against present or future claims for labor and supplies put into the road than if he had been invested with the legal title. For the purposes of this case, he must be treated as an owner. He was, by virtue of his sole ownership of the stock of the legal creature, the owner of everything held by that creature as entirely in equity as if the fictitious person did not exist. While laborers and supply-men might be limited in their demands for payment to the property of the company, yet, as against that property, these demands stand upon the same footing as if the legal title had vested in Crawford independently of the intermediate corporation. This artificial body was but the representative of its sole proprietor, and existed for his benefit. His dominion was as complete through the agency of the stock as if he had held the title by deed. In that case his interest, in equity, would be subject to the claims of those who, by their labor and materials, added value to his property. In equity creditors are held to have a paramount interest in their debtor's property to the amount of their claims, superior to any interest of the debtor.

Sawyer v. *Hoag*, 17 Wall. 623;
Lawrence v. *Nelson*, 21 N. Y. 166;
John v. *Erie R. R. Co.*, 22 Wall. 136.

If it be true, then, that Mr. Crawford was the owner of these bonds subject only to the pledge, and continued such down to the syndicate agreement, it follows that he was the owner of his own mortgaged securities subject only to the payment of the amount which he owed, for which they were held in pledge. Mr. Porter having, by the terms of that agreement, placed himself in Mr. Crawford's shoes and paid off Mr. Crawford's debt, with notice of the existing equities in favor of these appellees, he thereby became liable in equity to pay off the claims of these creditors which had helped to produce the property, the title deeds of which he obtained through the syndicate agreement.

Clements v. *Moore*, 6 Wall. 299;
Drury v. *Cross*, 7 Wall. 299;
Railroad v. *Howard*, 7 Wall. 392.

10. Knowing, as he did, the terms of the construction contract of Mr. Crawford made with himself, and that the title to these

bonds rested either upon that contract or upon the consideration of money which Mr. Crawford had advanced for the improvement of his own property, Mr. Porter can not be heard to say that in assuming the position he did, he can, in equity, cut off the claims of these creditors who produced the very thing he was buying, by their labor and materials.

County of Morgan v. *Allan*, 103 U. S. 498;
Hatch v. *Dana*, 101 U. S. 205.

11. The stock liability off Mr. Porter was not decided by this Court. It was before the lower Court and passed upon by it. *Vide*, District Judge's Opinion, Rec. p. 134.

Mr. Porter being in possession of over $700,000 par value of the stock which he took and accepted, knowing the conditions upon which it was issued, and knowing that its issue was a fraud, not only upon the road but upon all having dealings with it, and having voted it at the last meeting before the foreclosure proceedings were had, it seems to us that he is not in a position to deny his liability to these creditors, to the full amount of their claims, they, being less than the par value of stock which he has. A court of equity having the parties, and all these facts before it, might well adjudge that these claims should be paid out of the proceeds of the sale of the railroad, and thus save the necessity of another suit to be waged by the receiver against the delinquent stockholder. In this view of the case the decree is right. Cook's Stock and Stockholders, p. 212, *et seq.*

IRWIN'S CLAIM.

Mr. Irwin had a mechanic's lien upon that part of the railroad which he constructed. It is admitted that this lien conformed in everything to our statutes. (Butler's brief, p. 99.) (Our brief, p. 106.)

Porter's contention is that New redeemed the railroad from Irwin's sheriff's sale and that therefore Irwin's lien was exhausted.

Our contention is that (1) New had no right under the law to redeem. Section 783, R. S. Ind., 1881, does not contemplate a redemption from a sale of railroad property. (2) Section 771, R. S. 1881, defines the class of creditors who may redeem. To give them a right of redemption they must have a lien on the property sold. As we have shown, Irwin's lien did not attach to anything but " embankments, cuts and excavations." New, therefore, could not redeem for this reason. (3). The decisions in Indiana under like statutes hold, that even if New could redeem, it does not discharge the property from the lien acquired, but is a redemption simply *from the sale.* This redemption simply postpones any residue that might be owing on the foreclosure of the lien, to the amount paid for redemption. In other words, it makes the amount paid for redeeming the property, a prior and paramount lien to the residue remaining unpaid of the lien foreclosure.

Green v. *Doan*, 57 Ind. 186;
Teal v. *Hinchman*, 69 Ind. 379;
Taggart v. *McKenzie*, 85 Ind. 397.

It would seem that in this State the profession have generally regarded the redemption law as inapplicable to mechanic liens on railroad property, for there is no case within our knowledge in our Supreme Court, where any member of the bar has ever waged that contention.

BESSEMER STEEL CO. CLAIM.

It is not disputed that the contract for the sale of rails by the Bessemer Steel Company was made after the execution of the railway company's bonds and mortgages. It is not disputed that the Steel Company made a constructive, but not a physical, delivery of the rails sold, and that it so secured and retained a vendor's lien. The rails were placed in store at a place apart from the Chicago & Great Southern road by the Steel Company. Subsequently—possibly three or four months after being so placed in store—they were taken out of store by the Chicago & Great Southern R'y Company and placed in its tracks. This was done without the consent and without the knowledge of the Steel Company.

As against the railway company, the rails went into its track and remained in its track subject to the Steel Company's vendor's lien. The fraudulent removal of the rails from their storage did not affect the Steel Company's rights in them.

If the rails are covered by the railway company's mortgage, they go in under the after-acquired property clause, and, so going in, the mortgagor's property in them is simply mortgaged; that is, they lie in the track subject to the Steel Company's first lien.

It was not seriously contended by the appellant that the Steel Company did not have such lien when the rails were put in the track, but it was argued that afterwards the lien was lost, *first*, by a waiver in the acceptance of part payment, and, *second*, by a waiver in the subsequent taking of Mr. Crawford's personal obligation. Had the rails still been in the physical possession of the Steel Company at the time of the acceptance of the part payment, manifestly such an act on its part would not have operated a waiver of its lien, for a stronger reason should this be true, when the railway company had fraudulently deprived it of such physical possession. Again, the Steel Company was in the position of one who is *in extremis*. It could acquire no lien under any statute then in force in Indiana, and it could not in Indiana recover the rails in replevin. It was practically remediless. Under such circumstances it can not be said that the acceptance of part payment was a confirmation of the fraud, because the parties were not then dealing at arms-lengths. There is in the Record no evidence that the Steel Company knew from what source the money came which was so paid to it.

The personal obligation claimed to have been received by the Steel Company, as shown by the Record, is contained in Mr. Crawford's letter, to be found on page 773 of the Record. If this letter imports a guaranty by Mr. Crawford, it is enough to say that the contract is without consideration, and the security is invalid. The taking of such a security is not a waiver of a vendor's lien.

CONOLUSION.

Of course this Court can not feel the direct influence of the wreck of this railroad along its route, like it could if its sittings were closer to its location; nor do we know that it is material that it should. One thing we do know, and that is that this Court, as well as all other citizens of the Republic, are conscious of passing events of a general and public nature. We are not of those who believe that courts, sitting in silent judgment over the interests of private citizens, must close their eyes to these surroundings. Sometimes it happens that judgments pronounced by courts shake to the very foundations the governments in which they are pronounced. Such was the effect of the Dred-Scott decision. To a less extent, the same effect was produced by what is known as the "Greenback cases." Others of less moment might be cited, but these are enough to illustrate the point we suggest, which is that the great body of the people still look to the courts for such conservative action between labor and capital as will conserve the one and protect the other. This, and this alone, will prevent strife, revolution and anarchy.

A. C. HARRIS,
J. C. COOPER,
Of Counsel.

W. H CALKINS,
Solicitor for Appellees.